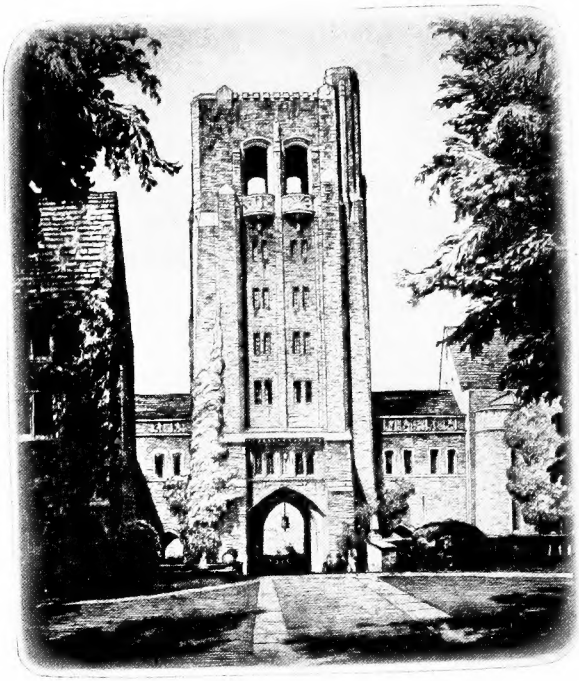
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THE

# BENCH AND BAR

OF

# MISSISSIPPI.

BY

JAMES D. LYNCH.

NEW YORK:
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1881.

# PREFACE.

THIS work treats only of the dead, with the exception of the last chapter, which is devoted to observations upon the characters of eminent living lawyers who are more than three score and ten years of age; and in its preparation the author has sought to present accurate sketches of the distinguished jurists and lawyers who have graced the jurisprudence of Mississippi, together with an exposition of the peculiar traits of character by which they rose to eminence.

It is not assumed, however, that this work comprises the mention of every good man, or good lawyer of local repute, but only of such as, owing to their varied pre-eminent qualities, are justly entitled to the fee of eminence. There were many, very many, of the former class whose characters are fully worthy of the most meritorious mention, and even a compendium of whose deserts would fill the pages of many volumes; but it has been the design of the author to embrace only those whose professional careers were characterized by transcendent genius, and which gave marked dignity and elevation to Mississippi jurisprudence. If he has omitted any of this class, the oversight was due to a lack of information respecting their characteristics, and their friends must take upon themselves, in part, the responsibility, if such there be, of withholding intimations which would have led to a thorough inquiry.

The lives of lawyers are generally monotonous, and void of noticeable event. They leave, as a general thing, but little record of their merits, and a work devoted exclusively to professional incidents must depend largely upon oral evidence and traditional testimony; and the only question, in those cases, is, to whom did the concurrence of the bar and the voice of the people accord the meed of eminence? It is true that the latter test subjects, arbitrarily, all claims to merit to the measure of success, which cannot, in all cases, be accepted as a just criterion, for in this respect there is often a *vice versa* relation; yet it is the plumb-line by which the edifice must be mainly erected,

the adjustment rendered, and from which the definitive measurement must be obtained.

In the composition of this work the author has occupied a neutral ground of observation. Save in two or three instances, he was neither the professional nor social contemporary of its subjects, and had no prejudices to subserve or predilections to gratify. Lord Coke says that "a juror should stand indifferent as he stands unsworn"; and this has been the exact position of the author. He has extended his researches throughout the State, endeavored to obtain information from every known source, weighed the evidence, compared the testimony, drawn his conclusions from established facts, and striven to treat of merit in respect to the degree in which he has found it. He has followed the flash of the star of eminence, and subjected his pictures to the brilliancy of its twinklings.

In the execution of his labors he has, in some instances, experienced much difficulty in obtaining the necessary data, and much perplexity in finding phrases to express the nice discriminations necessary in the analysis of character, and to define its multifarious features, which he has found to be as varied as the outlines of form and the shades of color. But, such as it is, the author bids its departure upon the wings of its fate; and if, like Noah's raven, it be lost upon the wide expanse, let his intentions be its only memorial; but if it should return with the olive-branch of favor, and the author should outlive the present older generation of lawyers, he will supplement it with a second volume, in furtherance of the record of that eminence of which Mississippi furnishes so many illustrious examples, both among her living and her dead.

To Mr. Justice H. H. Chalmers, of the Supreme Court, General T. J. Wharton, and Attorney General T. C. Catchings, who were appointed, respectively, by the Governor, the Chief Justice, and the author, as an advisory committee on the work, the author tenders his sincere thanks for their kind suggestions and wholesome counsel, and for the patience with which they withstood the annoyance incidental to that relation.

JAMES D. LYNCH.

West Point, Miss., December 1, 1880.

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# CHAPTER I.

## INTRODUCTION.

GENIUS—ITS SOURCE—ITS UNIVERSAL APPLICATION—ITS VARIED MANIFESTATIONS—THE CERTAINTY OF ITS ASSERTION—THE LAW ITS PECULIAR SPHERE—FAME THE MEED OF GENIUS—THE COMMON LAW A PROLIFIC SCHOOL OF FAME.

THE definition of that intuitive principle or subtle quality of the mind, which we call genius, is yet an unanswered question; at least, it has never received an intelligent interpretation among men. Its source lies concealed in the unexplored recesses of human nature; nor is its presence known until, awakened by the touch of opportunity, it bursts from its gyves, and flashes upon the world with a light that illuminates the extending scope of its own vision.

But, whatever may be the abstract nature of genius, its qualities are readily recognized, and its manifestations easily judged. Its course is upward and onward, and its flight is bounded by no definable horizon, while its zenith is hidden somewhere in the realms of eternal and untarnished light.

The application of genius is universal, and it has kindled its beacons along the highway of every sphere of life, penetrated the occult depths and obscure labyrinths of every science, and illumined a path for the advancement of every art. It is, indeed, the assignable coefficient of all enterprise and the multiplicative exponent of all progress.

Nor is genius to be measured by its means of appliance. It perhaps required as much genius in Adam and Eve to patch their fig-leaf aprons as in the manufacture of the finest fabrics of modern art, and as much in Noah to fit the timbers of the ark as in the construction of the proudest vessel that ploughs the waves of the western world. But from the summit of

Ararat it winged its way with new-fledged pinions until it rested in triumph upon the pinnacle of Solomon's Temple; whence it gave sanctified utterance to the tongue of prophecy, and guided the pen of inspiration along the pages of Holy Writ. Yet, while the hand of genius was hewing and fashioning the pines of Lebanon into the columns of the great temple, with uplifted eye it gazed into the starry canopy of heaven, caught the first glimpse of the star of Christianity, and, like a sentinel on the watch-tower, heralded every gleam of knowledge that flashed across its vision; and thence, with increased glow, it illuminated the pages of Grecian and Roman literature, and evoked those sparkling gems of thought whose coruscations will dazzle the eyes of the intellectual world to the end of remotest time.

But, in conformity with the vicissitudes of all human grandeur, the eyes of genius were at length closed by the cold finger of Fate; and, hurled by the hand of barbarism from the Tarpeian rock, it lay for ages hidden beneath the wreck and ruins of the Roman Empire; yet the spark glowed on until it slowly arose from the smouldering ashes, burst through the pall of the dark ages, and rekindled its blaze in the revival of learning.

Yet, while the true course of genius is upward, it is not always subordinated to the good of mankind, but is often perverted and prostituted to unhallowed purposes by the wayward passions that flourish in its train. While with pious sweat it could carve the lofty architraves and rear the temple of Jehovah, it could with sacrilegious hand heave the huge rocks, and pile them upon the Tower of Babel, with mad desire to invade the very chambers of the Almighty. While it strung the pastoral lyre and tuned the shepherd's reed, it gave power to the destructive engines of Archimedes, and the fatal twang to the archer's bow; and though it glowed in the natural laws of Kepler and the civil code of Justinian, flashed through the glasses of Galileo, and illuminated the hallowed visions of Luther, it also glittered in the crown of Alexander, burnished the helmet of Cæsar, and flamed in the sword of Bonaparte.

But, whatever may be the mode of its indication; whether it

sparkles in the eye of the astronomer, smiles upon the lips of the minstrel, frowns upon the brow of the misanthrope, decks the finger of the artisan, or emblazons the sword of the conqueror, the characteristics of genius are the same. It is only the purposes to which it is devoted, the motives by which it is guided, and the brilliancy of its manifestations, that give to it any variety of character; and these are as varied as the channels of human thought, the fires of human passions, and the spheres of human action. It is the same principle that gives inspiration to the poet, conception of beauty to the artist, brilliancy of argument to the advocate, a lucid discernment to the judge, religious fervor to the devotee, and ingenuity to the midnight burglar and the common swindler. But in whatever direction its prowess may be exerted, its qualities are soon manifested.

A man of genius is sure to assert his superiority in whatever walk of life he may direct his course, and whether it be for the good, or to the detriment of society, depends upon the passions by which it is actuated. "Such men," says Lord Bolingbroke, speaking of superior spirits in elevated positions, "either appear like ministers of divine vengeance, and their course through the world is marked by desolation and oppression, by poverty and servitude; or they are the guardian angels of the country they inhabit, busy to avert even the most distant evil, and to maintain or to procure peace, plenty, and the greatest of all human blessings, liberty."

But, however certain may be the development of genius, its conspicuity is often governed by circumstances, and frequently trammelled by the presence of other and incompatible qualities. Chief among these is timidity—a lack of courage sufficient to command on all occasions the full and clear exercise of the faculties, and to lay hold with proper alacrity and vigor upon great and rare opportunities.

It was from this cause that Cicero failed in his defence of Milo. He did not have the courage to display his usual and natural eloquence in the face of prejudice and under the frown of power; and Lord Erskine, through his reluctance to encounter Mr. Pitt and Edmund Burke, lost the great opportunity of his life in declining the defence of Warren Hastings; while,

on the other hand, Lord Brougham wreathed his brow with immortal glory by his bold defence of the unfortunate Queen Caroline, in the face of courtly clamor and kingly opposition.

Genius is often marred also by passion and prejudice. If it would retain its lustre, though clothed in the tinsel of eloquence, its lips must be rouged with the carmine of kindness and complacency. The angry invectives of Achilles gained him no sympathy, while the soothing eloquence of Nestor swayed the minds of the Grecian host. It is true that a judicious appeal *ad hominem* sometimes produces a wonderful effect, as in the first oration against Catiline; but the eloquence of genius rarely distills from the pale lips of anger. The furious accusations of Tertullus produced no formidable effect; but we are told that when Paul *reasoned* the court trembled; and Lord Coke greatly impaired his efficiency, and injured himself in the eyes of posterity, by his virulence on the trial of Sir Walter Raleigh when he condescended to *thou* him as a viper and traitor.*

Of all the schools of science, there is no one so prolific of the fruits of genius as that of the law. There is no sphere in life that presents so many necessities and motives for its exercise, and such a vast field for its development, as that of a lawyer. His constant intercourse with all sorts and conditions of men, and his frequent dealings with all the multiplied concerns of life, render him familiar with human nature, with all the workings of the human heart: its virtues and its vices, its strength and weakness, and the varied manifestations of its passions; and he necessarily becomes an expert in all the motives and a detective of all the springs of human action.

The wide scope of his learning, the confidence reposed in his honor and integrity, his tutored conservatism, and usual freedom from the virulence of party and the malignancy of faction,

* When all argument failed him, Coke, then Attorney-General, poured a torrent of abusive epithets upon the noble prisoner, and applied to him the term *thou*: "Thou hast an English face and a Spanish heart, thou traitor; for I *thou* thee, thou viper." A reference is made to this signification of *thou* in *Twelfth Night*, when Sir Toby Belch, in urging Sir Andrew Aguecheek to send a sufficiently provocative challenge to Viola, suggests: "If thou *thou'st* him some thrice, it shall not be amiss."

constitute for the upright lawyer a just claim to be a leader of his fellow-men ; and when to this broad field of knowledge he brings the rare gift of genius, it, at once, places him in the line of distinction, and, with the aid of other and usually concomitant virtues, raises him, sooner or later, to a proud eminence of superiority, and procures for him a just title to the fee of fame.

But, while the bar offers the most illimitable scope for its exercise, it is the severest test, and most precise and exacting of all the measures of genius. It permits no successful charlatanism, no ephemera of superficiality and pretention, but subjects every candidate for superiority, every claimant to the quality of excellence, to a just and infallible estimation.

A title to fame acquired under the eye of such close, competent, and penetrating scrutiny, amid such exacting circumstances, and under such a nice adjustment of qualifications, is surely of an exalted character, and worthy of the highest admiration of mankind. Such fame is not of that kind which Pope would have us believe to be a temple of ice melting away with each returning sun ; nor is it a mere second life upon the breath of others, or posthumous inheritance founded upon custom or arbitrary rules of descent ; nor does its tenure depend upon any uncertain fine. It is the most certain and enduring of all earthly possessions, the *ultima thule* of human attainment, the crowning glory of pre-eminent virtue, the meed of an immortal name. No ;

> Say not to me such greatness ever dies,
> Or Lethe's waves can over virtue roll ;
> For glory has its realms beyond the skies,
> And there it copies of its earthly scroll,
> There sets its music to celestial chime ;
> And when its bright and proud historic page
> No longer flutters to the breeze of time,
> Beyond the reach of man's invidious rage,
> Its shafts will rise where time knows neither youth nor age.

The vast and intricate system of common-law jurisprudence, with its comprehensive doctrines, its nice shades, subtle distinctions, and unlimited application, has been from time imme-

morial a fertile field of fame. It is there that we find those brilliant precedents of eminence, those illustrious examples of true greatness, which have afforded marks and models for the aspiration of every country, and of every age since the days of Runnemede.

It is there that ambition may revel among the most gorgeous pictures of glory ; where genius can find an unlimited scope for the exercise of its utmost powers ; where freedom may find shelter from the pelting storms of oppression ; where the statesman can gather material for the fabric of the wisest government, and the patriot may clothe himself in more than Vulcanian armor for the defence of the liberty and honor of his country.

It was in this field that Coke and Hardwicke, Mansfield, Eldon, and Burke, and a host of others no less renowned, erected their monuments of eternal glory. Notwithstanding the difficulties of the way, the height and ruggedness of the ascent, there is no sphere in life where so many hands are beckoning from the lofty eminence, and where so many footprints lead to the summit, as the law. Nor are these confined to the steps of the Inner Temple, or to England's soil, but up the same pathway, and to a no less degree of eminence, ascended our Marshalls, Storys, Taneys, Kents, and Sharkeys, and others, to whom it will be no disparagement to add, to a less degree.

It is the purpose of this work to trace the tracks made by the members of the Bench and Bar of Mississippi along this illuminated highway ; to assign to each, as nearly as possible, the just measure of his progress ; and to designate the qualities of mind and traits of character by which it was advanced or retarded ; and, above all, to present a record of virtue and genius that will, for all time, inspire the young men of Mississippi with a lofty patriotism, a laudable ambition, and a determination to achieve distinction and success.

# CHAPTER II.

## THE MISSISSIPPI TERRITORY—ITS JUDICIAL ESTABLISHMENT—THE BAR—EMINENT LAWYERS—1795–1817.

HARRY TOULMIN—CHRISTOPHER RANKIN—THOMAS B. REED—ROBERT H. ADAMS—LYMAN HARDING—GEORGE POINDEXTER—JOSEPH E. DAVIS.

THE country comprised in the State of Mississippi formed a part of what was known as the Mississippi Territory, and prior to the year 1802, when it was ceded to the United States, belonged to the State of Georgia. It was also claimed by the King of Spain, as forming a part of British West Florida, and was occupied by Spanish troops from 1783 until 1795, when, by a treaty between Spain and the United States, the pre-existing rights of Georgia were recognized and confirmed, and the Spanish troops withdrawn.

But, from the year 1783, and during the entire period of the Spanish occupation, Georgia, supported by the Government of the United States, continued to assert her claim of ownership in the soil, and by legislative enactments maintained her right of sovereignty and eminent domain, and extended her laws and jurisdiction over the country. Neither Georgia nor the United States ever acquiesced in the Spanish occupancy; nor did the King of Spain exercise any civil jurisdiction over the country. His dominion was confined to the lines of his military camps and garrisons; hence, upon its evacuation by the Spanish troops, it was held that the wrongful occupancy left no trace of the civil law of Spain upon the jurisprudence of the country; and on the organization of the Territorial government in the same year of the Spanish treaty, the common law was declared in the Territorial constitution to be the law of the land. This provision was also held to be a nullification of the Georgia statutes, which

otherwise would have become, by analogy, a part of the common law of the Territory, as the English statutes in force at the Declaration of Independence formed a part of the common law of the States, and which were held to have been also excluded by this act from operation in the Territory.

Thus it will be seen that a pure common-law course of jurisprudence was early established in the Territory; and this continues to be the law of Mississippi in all cases where it is applicable to our circumstances, adapted to the spirit of our institutions, and has not been expressly repealed, enlarged, or modified by statute or varied by usage; and our courts have constantly rested a scrutinizing and jealous eye upon any statute passed in its derogation. They have invariably given to such statutes a strict construction, careful not to enlarge their import or operation beyond the expressed intention of the Legislature. Hence the legislative invasions of the common law in Mississippi have been confined, for the most part, to such instances as are rendered necessary by the character of our government and the condition of our society; and it is to be regretted that the common-law rules of pleading have been so simplified by statute and the practice of the courts as to leave a broad gap in the bar for the entrance of incompetence and ignorance. In this respect it is to be confessed that a noble science has been degraded through a mistaken notion of expediency.

Thus the lawyers of Mississippi were early introduced into that illimitable and boundless field of jurisprudence, whose nice distinctions, subtle intricacies, and comprehensive scope, had awakened and given food and impulse to that brilliant array of greatness which emblazons with glory the history of the English courts.

In establishing the Territorial courts, the course of the common law was, in every instance, cited as the one to be pursued. Indeed, the constitution and powers of these courts, their characters, jurisdiction, and mode of procedure were all made similar, as far as practicable, to the common-law courts as already established in the States; and as the various changes and modifications to which they have from time to time been subjected, evince the necessities of the progress as well as the pecu-

liarities of our society, I will present their character and constitution in the order of their establishment. An act passed on the 28th day of February, 1799, by the Territorial Council, which consisted of the Governor and the three Territorial judges, provided for the establishment of a court to be styled *the General Quarter Sessions of the Peace*, which was to be held four times annually in every county, and that a competent number of justices should be nominated and commissioned by the Governor in every county, under the seal of the Territory, which justices, or any three of them, one being a justice of the quorum, should hold the *General Sessions of the Peace* when and as often as occasion required.

The power of these courts extended to the cognizance of all crimes and misdemeanors, of whatever nature or kind, committed within their respective counties, the punishment of which did not extend to life, limb, or imprisonment for more than a year, or forfeiture of goods and chattels, or lands and tenements, to the government of the Territory.

From the judgment of these courts a writ of error lay to the Supreme Territorial Court; and the same act provided that the Territorial judges should hold a supreme court once in every year in each county, at the place appointed for the courts of General Quarter Sessions.

To these courts belonged, as a matter of course, the highest judicial functions, and all the powers and scope of the Territorial jurisprudence. Besides their appellate jurisdiction, they had all the original functions of common-law courts of assize, of oyer and terminer, and of general jail delivery.

By this same act was established also a court of common pleas, which was to be held four times annually in each county, and for which a competent number of justices was to be commissioned by the Governor, which said jutsices or any three of them, according to the tenor and direction of their commissions, should hold pleas of assize, scire facias replevins, and hear and determine all manner of pleas, actions, suits, and causes, civil, personal, real, and mixed, and according to the course of the common law.

In addition to these, an act was passed at the same session of

the Legislative Council appointing a judge of probate in each county, who should have cognizance of all matters belonging and pertaining to a court of probate, except the rendering of definitive sentences and final decrees. These courts were to be held four times annually in each county, and, whenever it was necessary that final decrees should be rendered, the judge was required to call to his aid two of the justices of the court of common pleas, and, when thus constituted, the court had full probate jurisdiction.

In the same year an act was passed, entitled "A law for the easy and speedy recovery of small debts," which provided that, upon complaint being made to any justice of the common pleas or of the peace against any debtor whose debt was under eight dollars, he should issue his writ, causing the parties to be brought before him forthwith, and, after hearing the evidence, should forthwith give judgment in the matter, which should be final and conclusive to all the parties to the action, without appeal; and if the judgment was not immediately satisfied, and no effects were found sufficient to produce the amount, the constable was required to take the debtor to jail, where he was to be safely kept until the sum recovered and all costs should be paid.

By this same act, debts amounting to eight dollars and upward, and not exceeding twenty dollars, were made cognizable before any justice of the common pleas or justice of the peace in the county in which the defendant might reside; who, upon complaint, should issue his capias, or summons, if the defendant was a freeholder, requiring the parties to appear before him; and upon judgment being rendered and remaining unsatisfied, the constable or sheriff was required to convey the debtor to jail, where he was to be safely kept until the amount of the judgment and all costs were paid.

In 1803, the Territorial Assembly erected the town of Natchez into a city, and there established the first mayor's court in the Territory. This court had jurisdiction of all crimes and trespasses committed within the city, in which the punishment did not exceed a fine of fifty dollars, imprisonment for one month, sitting in the stocks, or standing in the pillory; and of all civil

actions originating in the city for any amount not exceeding one hundred dollars ; and all civil proceedings were made summary, unless a jury was demanded, which either party might do if the matter in controversy exceeded twenty dollars.

From this court an appeal, when the amount involved exceeded fifty dollars, lay to the Superior Court of Adams County. An appeal lay also from the judgments of the mayor to the city council, held by the mayor and aldermen, who were all commissioned justices of the peace.

These courts performed the judicature of the Territorial government, with but few changes in their functions, until the year 1807, when its equity cognizance was, for the first time, declared and established.

However simple and arbitrary may appear this system, it was perhaps the best and most suitable one that could be devised for the government of a Territory in which the population was sparse and promiscuous, where business transactions were conducted on a small scale, and where it was necessary to enforce the law of *meum* and *tuum* in a simple and summary manner.

A digest of its judicature is a truthful indication of the state of a community ; and the great danger in the establishment of the jurisprudence of a new country lies in the introduction of the complex systems of older commonwealths.

While the courts of the Mississippi Territory were being strained into conformity with the requirements and vast machinery of the English common law, they were often perplexed with the multitude of complications arising from the various tenures of realty existing, or supposed to exist, in the Territory. Great Britain had claimed the country as being an appendage of the colony of Georgia, and in confirmation of its claim had made grants of lands to its subjects. This claim, as we have seen, was renewed by the State of Georgia, which also issued patents to its citizens. Then followed the Spanish occupation, and large grants of the Territorial lands were made by the Spanish Government ; and notwithstanding the acknowledgment by Spain of the pre-existing rights of Georgia, we find the Territorial courts, and even the early courts of the State, greatly confused in respect to the laws of alienation and descent

of landed property. While the civil law was, from the first, protested and ignored, yet it seemed difficult to reconcile the questions arising from the Spanish grants, held under the civil code, with the rules of the common law. These questions were, however, finally settled by the extinction of the supposed civil tenures, and an exclusive application of the common-law rules.

But let us return to the organization of the Territorial courts. The act of February 10th, 1807, ordained that the Supreme Court of the Territory and the Superior Court of the District of Washington should also be and act as courts in chancery, and should have and exercise all the power, authority, and jurisdiction incident to courts of chancery, and clothed the Territorial judges with power to issue all remedial writs.

This act also established a county court, to be composed of three justices of the quorum, and gave to them the powers of probate and cognizance of all matters pertaining to orphans, the registry of deeds, and the control of the county police. This court superseded the powers of probate which had been established, and its jurisdiction extended to all cases in which the amount involved did not exceed one thousand dollars, except in real actions; and from its proceedings an appeal lay to the superior or circuit court of the county, which was presided over by one of the Territorial judges. These courts were established by this same act, and were invested with general original civil and criminal jurisdiction, and with an appellate jurisdiction from the county courts. The judges were prohibited from charging juries in respect to matters of fact, but they might sum up and state the testimony, and declare the law; and the Governor of the Territory was authorized and required, by and with the advice and consent of two of the Legislative Council, as often as necessary, to issue a commission to the judges of the superior courts of the Territory, empowering them, or any two of them, or the judge of the Superior Court of Washington District alone, in the district, to hold a court of sessions of the peace, and oyer and terminer, for the trial of criminals of whatever nature or degree, and to give judgment and award execution.

But the judges might hold a special term when necessary, at their own discretion, being empowered to do so by an act fixing the mode of summoning juries, and for other purposes. And this same act established a court of record, to be called and styled the "Supreme Court of the Mississippi Territory." This court was to be held by the Territorial judges at a fixed and designated place, but they were also required to hold a court of record, to be called and styled the "Circuit Court of the County of" (naming the county), twice in every year in each of the counties of Wilkinson, Adams, Jefferson, and Claiborne; but these county courts were to have cognizance only of those cases in which the amount claimed amounted to two hundred dollars; all cases involving a less amount being referred to the county court before the justices of the quorum.

But in 1809, the Legislature abolished the circuit and supreme courts, and conferred their jurisdiction upon a superior court of law and equity, to be held in each county.

This system remained unchanged until the year 1814, when it was enacted that the Territorial judges should hold, semi-annually, at the court-house in Adams County, a *Supreme Court of Errors and Appeals.* From this court writs of error issued to the several superior courts of law and equity; also writs of certiorari, habeas corpus, and all remedial writs pertainable to a supreme court of errors and appeals; but no cause could be removed into this court until final judgment in the court below, except when the judge below doubted as to the law or rule of decision; in that case he might respite the final judgment and refer the question to the Supreme Court. He was required, in this case, to send up a written statement, if not already of record, of the matter or points in doubt, together with the other proceedings in the cause, and thereupon the Supreme Court took cognizance, granted judgment, and awarded execution, unless it was necessary to ascertain some fact that went to the merits; in that case the cause was remanded to the court below for the action of the jury.

By this act the several superior courts of law and equity were given exclusive jurisdiction and cognizance of all actions and suits in which the value of the matter in controversy ex-

ceeded fifty dollars; and the jurisdiction of the justice courts was extended to that amount.

This was the character and constitution of the Territorial courts in 1817, when the State Government was inaugurated. In connection with the character and functions of its courts, the author would like to be able to trace the history of the most eminent judges of the Territorial Government; and his inability in this respect is a source of as much regret to him as it can be of disappointment to the reader. He has been able to obtain but little authentic information in regard to the early officers of the Territory, either from record or tradition. Those appointed by Mr. Adams and Mr. Jefferson were either Northern men or Virginians, and many of them were mere favorites of the administration under which they were appointed.

But the bar of the State has, from the first establishment of its courts, been adorned with pre-eminent ability. The richness and reputation of its lands, and the conflicting tenures by which they were held, arising from British, Spanish, and Georgia grants; the efforts of the early courts to reconcile the conflicting rules of the civil and common law in regard to alienation and descent; the establishment of banks of unlimited issues, and the consequent speculation and reactionary crises, produced a vast amount of litigation, that required and early attracted to the Mississippi Territory an unusual array of legal talent.

It is to be regretted that so little can be ascertained, at this day, in respect to the nativity and private character of many of the eminent lawyers of that period; their early struggles, their vigor of resolution; their laborious ascent and final triumph would surely present a narrative sparkling with instructive incidents and striking events; but the corroding finger of time has dimmed the records of their greatness, and stilled the hearts upon whose tablets their virtues were inscribed, leaving only, here and there, a glimmer of those lights whose brilliancy has been rekindled with a purer flame in a higher and eternal sphere. Notwithstanding that the public career of nearly all of the following gentlemen extended far down in the annals of the

State, yet they were closely connected with the establishment of the Territorial jurisprudence, and for that reason the sketches of their lives have been assigned to this chapter.

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## HARRY TOULMIN.

It is not known of what State Judge Toulmin was a native. He was appointed by Mr. Jefferson to be one of the judges of the Mississippi Territory; and we find him exercising that office in the year 1805, when he was chosen by the General Assembly to digest the laws of the Territory. This task he performed with fidelity and ability. His Digest is forcible, lucid, and comprehensive, and shows a thorough acquaintance with the rules of the common law, and a profound and accurate conception of the laws best adapted to the society of the Territory, and most conducive to its progress. In 1806, we find the acting Governor of the Territory congratulating the Assembly on the completion of this able compilation of the laws, and commending the author as deserving the thanks of his country, and suggesting that his reward should be proportionate to his merits.

In 1807, the General Assembly, after some few alterations and amendments, adopted the Digest as the law of the Territory. The Assembly at the same time required Judge Toulmin to add to his Digest all the laws passed at that session, and declared that when so enlarged it should bear the title of "The Statutes of the Mississippi Territory, revised and digested by the authority of the General Assembly," and that, after the ensuing October, all the laws of the governor and judges, all acts of the General Assembly of the Mississippi Territory, and all statutes of England and Great Britain, not contained in the said volume of statutes, should cease to be of force or validity in the Territory.

Judge Toulmin was also requested by the Assembly to prepare a set of forms and brief general principles for the information of justices of the peace, and to furnish the public printer with such ordinances and acts of Congress as related to the Mississippi Territory, to land titles within the same, to crimes

and misdemeanors, and the intercourse with the Indian nations, with the articles of cession between the United States and Georgia; and that the whole be added to the volume of statutes.

The Digest of Judge Toulmin, thus enlarged, begins with the first proclamation of Winthrop Sargent, first Governor of the Mississippi Territory, creating the two first counties, Adams and Pickering, the latter being afterward changed to Jefferson; and embraces all the laws in force on the 1st day of March, 1808, and is of value, not only on account of the genius and ability displayed in its adaptation, but also on account of the knowledge it affords of the origin and progress of our jurisprudence, the sure indication of the state and progress of society.

The last record we find of Judge Toulmin is a correspondence, held in 1813, between him and Governor David Holmes, in regard to organizing and equipping the Territorial troops in anticipation of the approaching Creek war, after which he passed from the stage of public affairs, and carried with him into his retirement the meed of a life adorned with a conscious and acknowledged benefaction.

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## CHRISTOPHER RANKIN.

The subject of this sketch was born in Pennsylvania, and was educated at Cannonsburg. He then emigrated to Georgia, where he taught a village school and prepared himself for the bar. In 1809, he removed to Mississippi, and was for a long time an able and efficient member of the Territorial Legislature. He represented the county of Amite, out of which the county of Rankin was formed, and named in his honor. He was also a member of the convention that formed and adopted the first constitution of Mississippi. He was an able and successful lawyer, a man of stern integrity and unswerving patriotism. He possessed in a high degree those qualities of mind and heart so necessary in the composition of eminence—a sound judgment, an unwearied energy, and an uprightness of character which commended him to the confidence and esteem of his

fellow-citizens. He did much toward the establishment of that sound basis upon which the splendid fabric of our jurisprudence has been reared.

Mr. Rankin was engaged in some of the first cases argued before the Supreme Court of the State, and to the management of which he brought that skill and learning which had signalized his career before the courts of the Territory. He continued his practice with increasing reputation until the year 1821, when he was elected to a seat in the national House of Representatives, to succeed the gifted Poindexter. This office he filled with great credit and fidelity, though he was not gifted with any eminent powers of oratory. He was more of a matter-of-fact advocate and legal logician than polished elocutionist. He remained in Congress until 1827, when he retired from political life, and died in Washington, carrying with him to his grave the unsullied laurels of a useful and successful career, both in the council and the forum, and, it might be added, in all the relations of life.

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## THOMAS B. REED.

Mr. Reed was a native of Kentucky, and had acquired some reputation as a lawyer before emigrating to the Mississippi Territory. He was remarkable for his laborious application and unswerving devotion to his profession, to which he adapted and devoted all the energies of his nature. To this feature of his character, and to the native vigor of his mind, was due that thorough mastery of the mysteries of the common law for which he became celebrated. His early education had been neglected, and his store of general learning was limited, hence he attempted no display of eloquence other than that which his thorough knowledge of the law evoked and his genius inspired. Though stiff and punctilious in his manners and bearing, he was a favorite among the members of the bar, especially the younger members, to whom he was ever ready to extend a lifting hand, and to whom he revealed beneath his seeming hauteur a kind and generous heart.

The reputation of Mr. Reed rose rapidly on his appearance at the bar of the Territory. The intricate questions arising from the variety of land tenures, and the difficult application of the common-law rules to the developing and multiplying concerns of the country, afforded an ample field for his genius and the exercise of his familiarity with the precedents and decisions of the common-law courts.

Mr. Reed made his appearance before the Supreme Court of the State in the first criminal case brought before that tribunal, the State *vs.* the Blennerhassetts, which he argued for the defence, at the June term, 1818. His reputation at the bar continued in the ascendency, and, in 1821, he was elected Attorney-General of the State, which office he filled for four years with great ability. In 1827, he was elected to the Senate of the United States. His legal knowledge and familiarity with the fundamental principles of our Government soon attracted attention in that body of able lawyers; and his speech upon what was known as the "Judiciary Question" gained for him the admiration of the Senate, and was highly commended by the press of the period. He died in 1829.

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## ROBERT H. ADAMS.

Mr. Adams was a native of Virginia, and born of poor and obscure parents. It is said that in his early youth he was apprenticed to the cooper's trade, and pursued that occupation into manhood. He consequently obtained but little education in his youth; but he possessed a native endowment of genius and perseverance, which inspired his bosom with an ambition to achieve a place and a name among men. Like many young men of this character, Mr. Adams, notwithstanding the apparently insuperable difficulties attending his path, directed his attention to the study of the law. His conscious vigor and natural sedulity of mind dispelled the gloom that hung over his prospects, and his resolution prompted him to undertake that which his ambition coveted. After acquiring a sufficient knowledge of the rudiments of law to gain him admission to the bar, he bade

farewell to his native valley, and made his residence in East Tennessee, where he entered upon the practice of his profession ; here he soon commanded notice and patronage, and rose rapidly in his profession ; yet his aspirations were not satisfied, and the prospects of the rich harvest of litigation which the Western Territories then presented seemed to offer the field he desired ; hither he removed, and established his office in the city of Natchez, where he at once entered upon a career brilliant and arduous.

Natchez at this time was noted for the legal ability that adorned its bar ; but Mr. Adams was equal to the severe test which a claim to superiority demanded, and was soon recognized as one of the most skilful and logical as well as most learned advocates at that bar of eminence. While he was deficient in general learning, his vigorous mind grasped and embraced the subtleties of the law with an alacrity and comprehension that impressed his opponents with surprise, the court and bar with admiration, and his hearers with a conviction of his superiority.

Mr. Adams possessed in a high degree that versatility of excitation which can awaken at pleasure the feelings of sympathy and abhorrence. He could recount the tales of sorrow and misfortune with a pathos that would moisten the eyes of all hearers, thrill at one moment the tenderest cords of the heart, and at the next, twang the arrows of indignation and scorn ; while he could pour forth the melting strains of commiseration, he could, when necessary, hurl the awakening thunders of wrath and vengeance until the culprit would writhe in the agonies of conscious guilt.

His mind was always clear and ready, and so plain were his statements of facts, so lucid his presentations of the law, that no ingenuity of argument, no skill of abstraction, could pervert their meaning or obscure his position.

Mr. Adams possessed a warm and sympathetic heart, and was a general favorite among the people. He was elected, in 1830, to the United States Senate in the place of Mr. Reed, who died the year preceding. Here the prospects of Mr. Adams were brilliant in the highest degree, and his learning, eloquence, and winning address, would, no doubt, have gained for him a national

fame had not the untimely hand of death checked his marvellous career. He died in a short time after his election to the Senate, beloved by all who knew him, leaving a multitude of friends, and not an enemy.

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## LYMAN HARDING.

Lyman Harding, the first Attorney-General of the State of Mississippi, was a native of Massachusetts. Having received a good education, he emigrated at an early age to the State of Maryland and engaged in teaching a country school; but, like most young men of talent and resolution, he desired a sphere more flattering to his ambition and more congenial to his high resolves, and, turning his attention to the study of law, he prepared himself for the bar while pursuing the vocation of a teacher. In this occupation he was engaged during several years, at the expiration of which, having obtained license to practice his chosen profession, he determined to seek his fortune in the South-west, and, making his way on foot to the city of Pittsburg, he descended the Ohio on a flat-boat to Louisville, and there opened a law office. But the circumstances of his first efforts were unpropitious, and, his means being exhausted, he again boarded a flat-boat and worked his passage as a laborer to Natchez, where he arrived soon after the establishment of the Territorial Government. Here he found a brisk and stirring arena, occasioned by the mixed tide of immigration which was at that time flowing from all parts of the country to the rich soil of the new Territory, and, amid the consequent speculation in lands and mercantile thrift, the legal attainments of Mr. Harding were soon called into requisition, and he immediately entered upon a thriving practice.

He possessed much of that shrewdness and acute insight in the chances of profit characteristic of his nativity, and soon accumulated a considerable fortune. Bold, talented, and energetic, his qualifications were well adapted to his professional requirements, and it was not long before he enjoyed the most lucrative practice in the Territory. He had no political am-

bition, and devoted all his energies to his profession; but his learning and vigorous habits could not escape the public demand for his services, and, on the organization of the State Government, he was elected Attorney-General.

In this capacity, besides his duties before the Supreme Court, he was required to attend the sessions of the Legislature, to give his opinions as to the constitutionality of its acts, and, when required, to draw bills for the members. His salary was fixed at one thousand dollars, and seven dollars per day in addition were allowed him for every day of his attendance upon the Legislature. He was also required to attend the courts in the first and second judicial districts.

But the ability of Mr. Harding was equal to the multiplicity of his duties, and he maintained the character of being an efficient officer, and held a high rank at the bar to the time of his death, which occurred in 1820.

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## GEORGE POINDEXTER.

When Demosthenes was asked, on one occasion, what was the chief ingredient of eloquence, he replied, "Action"; but he did not mean by this the mere gestures of the body, or theatric motions of the limbs; he meant that action which involves the practice of the principles we advocate, which not only indicates the sentiment that inspires eloquence, but impresses it into a rule of conduct—an incentive to achievement, a passion for doing. For eloquence and action have their origin in the same source, and, as a general thing, that which inspires eloquence is also an incentive to action. The man who can discourse eloquently and effectively upon the subject of charity must be a liberal man. He who can rise to the height of the subject, and picture the sunny features of liberty must be a free man; and he who can pluck its colors and stamp them in the language of thrilling incentive must be a patriotic man.

"The highest order of eloquence," says Mr. Blair, "is always the offspring of passion. A man may persuade others to act, by mere reason and argument; but that degree of elo-

quence which gains the admiration of mankind, and properly constitutes an orator, is never found without warmth or passion. Passion, when in such degree as to arouse and enkindle the mind without throwing it out of the possession of itself, is universally found to exalt all the human powers. It renders the mind infinitely more enlightened, more penetrating, more vigorous and masterly, than in its calmer moments. A man actuated by a strong passion becomes much greater than he is at other times; he is conscious of more strength and force, he utters greater sentiments, conceives higher designs, and executes them with a boldness and felicity of which, on other occasions, he would think himself utterly incapable."

If such be the effects of occasional exhibitions of passion, we must attribute the constant capacity for eloquence to some constant and sempiternal influence, some ruling and ever-present motive. This motive may be, as it often is, a selfish ambition, or a desire of applause, or it may arise from the softer emotions of the heart, or from a spirit of pure patriotism, in which are blended all the noblest sentiments of humanity. To this last we have no hesitancy in ascribing those constant and wonderful powers of eloquence which characterized the subject of this sketch.

George Poindexter, one of the proudest and brightest names in the annals of Mississippi, was a native of Virginia, and sprang from a large and influential family in that State. I have been able to ascertain but little in regard to his early life; but he must have had the advantages of a finished education. He made his appearance in Mississippi soon after the organization of the Territorial Government, where his rare genius and ability were soon recognized; and we find him a member of the Territorial Assembly as early as 1805, in which he assumed and held a leading and influential position until the year 1807, when he was elected to represent the Territory in the Congress of the United States.

The following is his reply to the committee informing him of his election:

"GENTLEMEN: I receive, with emotions of gratitude and respect, the notification of my election as the delegate from this

Territory to the Congress of the United States. After a residence among you of several years, during which time I have been principally engaged in the public service, nothing could contribute more to my gratification than the sanction of the enlightened representatives of that community whose welfare has, in part, been committed to my care and management.

"The task assigned me is indeed an arduous one: various reflections lead to a conviction that it may become still more important and difficult, and I almost despair of meeting the just expectations of the people whose interest I am deputed to represent; but whatever of talents, whatever of information or industry I may possess, shall not fail to be called forth in promoting the advancement of our common prosperity and independence.

"Accept, gentlemen, for yourselves and both Houses of the General Assembly, my warmest acknowledgments for the high confidence you have conferred on me, and the assurances of my best wishes for your individual happiness.

"GEO. POINDEXTER."

The course of Mr. Poindexter as the representative of the Territory in the Congress of the United States was marked at once with the utmost fidelity to the interest of his constituents, and with an ability that attracted the admiration of that body and the attention of the country; and to him was due, for the most part, that legislation, both at home and in Congress, which was so favorable to the progress of the Territory and the development of its resources; to the establishment of a healthy jurisprudence, and the advancement of every interest.

On the expiration of his career in Congress as the delegate from the Mississippi Territory, Mr. Poindexter resumed his practice of law, but in 1813 he was commissioned by the President of the United States as one of the judges of the Superior Court of the Territory; and, in 1817, we find him an active and leading member of the convention for the organization of the State Government. He was chairman of the committee appointed to draft a form of government and constitution for the new State, and to him we are, in a great measure, indebted for

that admirable charter under which our State was launched upon its brilliant career of sovereignty.

On the organization of the State Government in 1817, Mr. Poindexter was again chosen as the representative of his people in the national Congress, to which, returning with a riper experience in the art of government, he entered upon a career as remarkable as it was brilliant and admirable.

In 1819, he delivered in the House of Representatives his celebrated speech on the Seminole War. This speech was evoked by the introduction of a resolution censuring General Jackson for causing the execution of the noted incendiaries and instigators of the war, Arbuthnot and Ambrister ; for his seizure of the Spanish posts of St. Marks and Pensacola and Fortress Barancas, which acts were alleged to have been done in violation of the law of nations and the express commands of the President of the United States.

Mr. Poindexter, after a comprehensive review of the nature, origin, and progress of the war, and a most masterly and eloquent vindication of the conduct of General Jackson, closed this speech with a peroration which fell like a thunderbolt upon the enemies of the noble old chief, and like an electric spark upon the patriotic spirit of the country. The conduct of General Jackson was vindicated and approved, and the machinations of his opponents brought to confusion and shame. This speech was highly commended by the press of the period. It stamped Mr. Poindexter as one of the most accomplished and eloquent orators in the national House of Representatives, and gave him a just title to that splendid fee of fame which he afterward enjoyed. This speech is introduced in full in connection with this sketch.

In November, 1819, and before the expiration of his term in the national House of Representatives, Mr. Poindexter was elected Governor of Mississippi, and entered upon the duties of that office on the 5th of January, 1820. In his message of that date to the Legislature he said : " There can be nothing more dear to the heart of the patriot than the prosperity, the honor, and glory of his country ; and no reward for sacrifice incurred in the discharge of duties necessary to the attainment of these

great objects is more precious than the smiles of an approving conscience and the unbought plaudits of an enlightened people. To merit the former is the full measure of my ambition, and to receive the latter is a solace which consummates all my wishes."

At the expiration of his term as Governor of the State, Mr Poindexter again retired to private life and devoted himself to the practice of his profession ; but while he was yet Governor, the Legislature passed an act authorizing and requesting him to revise and amend the statutes of the State. This duty he performed in a most able and satisfactory manner, and in 1822, his code was completed, and established as the law of the State ; and the Legislature, by a joint resolution of June 29th of that year, tendered to him the gratitude of the State for the fidelity and ability with which he had accomplished the task, and presented him with an elegant copy of the Encyclopædia.

In November, 1830, he was again called from his professional vocation, and elected by the Legislature of Mississippi to a seat in the United States Senate. In this position he manifested those increased abilities which experience engenders, and to the exercise of which this enlarged sphere gave plentiful scope. Mr. Poindexter had an exalted idea of American liberty, of the rights of the States, and of the people. He was extremely jealous of the least exercise of unwarranted power by Congress, or by either branch of the General Government. He was a strict constructionist of the Constitution and spirit of our Government, and though he had so ably and vehemently defended General Jackson in the House of Representatives ten years before, yet, when on the occasion of a resolution of censure, in 1834, President Jackson sent to the Senate his memorable protest, and which, as Mr. Poindexter conceived, was not couched in the language of courtesy and respect, he immediately assailed it as a breach of privilege.

He said : " I will not dignify this paper by considering it in the light of an Executive message : it is no such thing. I regard it simply as a paper with the signature of Andrew Jackson ; and should the Senate refuse to receive it, it will not be the first paper with the same signature which has been refused a hearing in this body, on the ground of the abusive and vitu-

perative language which it contained. This effort to denounce and overawe the deliberations of the Senate may properly be regarded as capping the climax of that systematic plan of operations which has for several years been in progress, designed to bring this body into disrepute among the people, and thereby remove the only existing barrier to the arbitrary encroachments and usurpations of Executive power."

Mr. Poindexter retired from the Senate in 1836, now full of years, and crowned with the laurels of a brilliant, useful, and exemplary life.

We have traced this remarkable man through his long and eminent career of public benefaction ; let us now notice some of those traits of character that achieved for him so much success.

Mr. Poindexter was a profound lawyer, notwithstanding his varied and almost constant public services : his early preparation, his genius, and assiduity, had enabled him to acquire a mastery of the science of jurisprudence. He was an impressive and eloquent speaker, but his eloquence was more like a torrent that sweeps everything before it, than that Ciceronian gentleness that glides upon the waves of conciliation. Mr. Poindexter was fond of the *argumentum ad hominem ;* he did not depend so much upon the fickle wand of suasion as upon the rod of reason : he gained the citadel of conviction by storm, direct, and full in front, rather than by the crouching manœuvres and circuitous paths of allurement. He possessed a keen sense of honor, and was open and generous in all his dealings ; punctilious in the discharge of his public duties, and resolute in the prosecution of every undertaking. He was all that Horace meant by his "*justus et tenax propositi vir.*"

But, above all, was his lofty spirit of patriotism. He was proud of his country, and loved his adopted State with an ardor that aroused his genius and kindled the fires of his soul. While he lacked, perhaps, that gloss and meteoric flash which characterized the eloquence of Curran and Prentiss, he possessed in a high degree that steady glow of genius and that power of aptness and elegance which gave lustre to the discourses of Pitt and Webster.

Mr. Poindexter was engaged at the bar in most of the noted cases of his time in the Territory, and always fully met the apprehensions of his opponents and the expectations of his friends, with increased distinction.

It fell to his lot, in the early part of his career, to prosecute the famous Aaron Burr, who, while making his first descent to New Orleans, was arrested at Natchez and subjected to a judicial examination in the neighboring town of Washington, then the seat of the Territorial Government. Mr. Poindexter conducted this prosecution with energy and ability; but Mr. Burr had many powerful friends in the vicinity—men of wealth and influence—who came to his rescue, and in consequence, notwithstanding the strenuous efforts of Mr. Poindexter, he was acquitted. But, no doubt, the distinguished prisoner was no less surprised than chagrined to find his plans penetrated by the eye of scrutiny, and disclosed by the tongue of eloquence, on the part of a young Territorial lawyer on the banks of the Mississippi.

Mr. Poindexter was a stanch advocate of popular education: he fully comprehended and appreciated the fact that a people to be free must have a knowledge of their rights and the duties they owe to society. In his message to the Legislature in 1820, he said:

"Before the august and overwhelming tribunal of a nation of freemen, whose minds have been reared and nurtured into full maturity under the benign influence of institutions recognizing the unrestrained toleration of religious and political opinions, and embracing the wide range of human rights, limited only by the condition of society, tyranny and bigotry stand appalled, and sink beneath the weight of reason.

"Our forms of government rest on the virtue and intelligence of the people, without which they will tumble into one general heap of irretrievable ruins.

"The avenues to education and knowledge ought to be made accessible to every youth, without distinction of rank. From the humble cottage surrounded by penury and want the brightest luminaries of intellect and virtue often burst forth, and the hero or the statesman is seen, rising from obscurity, to add

honor and renown to his country, and adorn the pages of its history."

Mr. Poindexter did much toward the establishment of a sound and expeditious system of jurisprudence in Mississippi, and it was the vivid picture he presented, in his message of 1821, of the evils attending a combination of the common-law and chancery courts, that induced the Legislature at that session to establish a separate chancery jurisdiction in the State.

"The establishment," said he, "of a rule of conduct and system of judicature that will bind society together, and which, with adequate penalties for every infraction of the public tranquillity, will furnish a certain and speedy redress of private wrongs, that will protect the weak from oppression and the virtuous from the snares and encroachments of the vicious, call for the best energies of the human mind, and should engage the attention of philanthropists and statesmen in every quarter of the civilized world."

Such were the utterances of one whose character I have thus feebly attempted to depict—a character of which the pen of a Thucydides, a Channing, or an Irving might tremble and grow dry in the effort of portrayal—a man whose biography is written in the laws and jurisprudence of his country, and whose epitaph is inscribed upon the proud monument of Mississippi.

## SPEECH ON THE SEMINOLE WAR, 1819.

The House being in Committee of the Whole on the resolutions censuring General Jackson for his conduct of the war, Mr. Poindexter addressed the Chair as follows:

"I rise, Mr. Chairman, under the influence of peculiar sensibility, to offer my sentiments on the subject before the committee. We are called upon to disrobe a veteran soldier of the well-earned laurels which encircle his brow, to tarnish his fame by severe reproaches, and hand down his name to posterity as the violator of the sacred instrument which constitutes the charter of our liberties, and of the benevolent dictates of humanity by which this nation has ever been characterized and distinguished. Were the sacrifice of this highly meritorious citizen the only evil

with which the proposed resolutions are fraught, I should derive some consolation from the reflection that there is a redeeming spirit in the intelligence and patriotism of the great body of the people, capable of shielding him against the deleterious consequences meditated by the proposition on your table. But there is another and a more serious aspect in which the adoption of these resolutions must be viewed : the direct and infallible tendency which they involve, of enfeebling the arm of this Government in our pending negotiation with Spain ; of putting ourselves in the wrong and the Spanish monarch in the right, on the interesting and delicate points which have so long agitated and endangered the peace of the two countries. I wish not to be understood as attributing to honorable gentlemen who advocate the measure such motives ; they are, doubtless, actuated alone by a sense of duty. I speak of the effects which our proceedings are calculated to produce, without intending to cast the slightest imputation on those who entertain different opinions.

" Sir, do we not know with what satisfaction the minister of Spain looks on the efforts which are made on this floor to inculpate the Executive of the United States, for having committed against his *immaculate* master an act of hostility, in the entrance into Florida, and the temporary occupation of St. Marks and Pensacola ? With what avidity and pleasure he perused the able and eloquent arguments, delivered in the popular branch of the Government, in support of the mighty allegations which he has already exhibited of the hostile and unwarrantable conduct of the commander of our army during the late campaign against the Seminole Indians ? And, sir, whatever may be the purity of intention, which I shall not presume to question, on the part of gentlemen who censure the course pursued by the commanding general, this debate will afford a valuable fund on which Spain will not fail to draw, on all future occasions, to show that the pacific relations which she has endeavored to maintain have been violated without any adequate cause by the United States. Shall we put it in her power to make this declaration to the civilized world, and establish the fact by a reference to the journal of the House of Representatives ? I hope and believe we shall not.

"Sir, the nature of our free institutions imperiously requires that, on all questions touching controversies with foreign powers, every department of this Government should act in concert, and present to the opposite party one undivided, impenetrable front. The observance of this accords with every dictate of patriotism, and is the basis on which alone we can preserve a proper respect for our rights among the great family of nations. Internal divisions are often fatal to the liberties of the people; they never fail to inflict a deep wound upon the national character, the lustre and purity of which it is our primary duty to preserve unsullied to the latest posterity.

"Can it be necessary to call to the recollection of the committee the peculiar and delicate posture of our relations with Spain? A protracted and difficult negotiation, on the subject of boundary and spoliations, is still progressing between the Secretary of State and its accredited minister at this place; the result is yet extremely doubtful; it may, and I trust will, eventuate in a treaty satisfactory to the parties on all the points in contest; but if Spain should continue to reject the moderate and reasonable demands of this Government, the indisputable rights of this nation must and will be asserted and vindicated by a solemn appeal to arms. I ask if, in such a crisis, it is either wise or prudent to pronounce, in the face of the world, that we have been the aggressors, and that war in its most offensive and exceptionable sense has been already commenced by General Jackson, under the sanction of the President of the United States? I hazard nothing in affirming that such a departure from the established usages of nations is without a parallel in the political history of any country, ancient or modern. Under whatever circumstances danger may threaten us from abroad, it is from this House that the energies of the people are to be aroused and put in motion; it is our province to sound the alarm, and give the impulse which stimulates every portion of the Union to a simultaneous and manly exertion of its physical strength, to avenge the insulted honor and violated interests of our country. We are the legitimate organ of public sentiment, and it is incumbent on us to animate and cherish a spirit of resistance to foreign encroachments among our constituents, by

urging the justice of our cause, and the necessity of their vigorous co-operation in support of the constituted authorities, who are responsible to them for the faithful execution of the high and important duties with which they are entrusted. These are the means by which we shall perpetuate our republican form of government, and transmit its blessings to future generations.

"But we are required on the present occasion to forget the wrongs of which we have so long and so justly complained; to abandon for a while the lofty attitude of patriotism, and to tell the American people, in anticipation of a rupture with Spain, that it is a war of aggression on the part of their chief executive magistrate, commenced in Florida without proper authority; that the Spanish Government can consider it in no other light than premeditated, offensive war, made on them with a view of extending the territorial limits of the United States. The expression of these opinions, by this body, must cast a shade over the American name which no lapse of time can obliterate; and while we nerve the arm of the enemy, we shall approach the contest with an open denunciation against the President, who is charged with its prosecution to a speedy and favorable termination. He is denied the cheering consolation of *union* in the government over which he has been called to preside, at a period of national peril, when every man ought to be invited to rally around the standard of his country.

"Sir, how is this most novel and extraordinary aberration from the legislative functions of the House attempted to be explained and justified? By gloomy pictures of a violated constitution, pathetic appeals to humanity in favor of a barbarous and unrelenting foe, and lamentations over the blighted honor and magnanimity of the nation. I, too, am a conservator of the Constitution; I venerate that stupendous fabric of human wisdom; I love my country, and will endeavor to rescue it from the odious imputations which have been so freely cast on it in the progress of this discussion. I admonish gentlemen, who manifest such ardent zeal to fortify the powers of this House against military usurpations, that they do not suffer that zeal to precipitate them into an error equally repugnant to a sound construction of the Constitution.

"The report of the Committee on Military Affairs, taken in connection with the amendment proposed by the honorable member from Georgia (Mr. Cobb), may be classed under two general divisions: 1st, Resolutions of censure on the conduct of General Jackson in Florida for a violation of the orders of the President, and of the Constitution, and for the unlawful execution of the incendiaries, Arbuthnot and Ambrister. 2d, Instructions to the committee to prepare and report two several bills, the object of which is to divest this nation of some of the most essential attributes of sovereignty. I shall pass over the latter branch of this subject without observation, believing, as I do, notwithstanding the high respect which I entertain for the mover, that it is not seriously the intention of honorable gentlemen by an act of legislation to abrogate the rights of this nation, founded on the universal law of nature and of nations. Self-denial, though sometimes an amiable quality in an individual member of society, when applied to the whole community renders it obnoxious to insult and oppression, and is a voluntary degradation below the rank of other sovereignties, to which no American ought to submit. Neutral rights and the usages of war are already well established and understood by all civilized powers; and it is not to be presumed that the interpolations which are proposed would be reciprocal and become the basis of new principles of public law. We may prostrate our own dignity and paralyze the energies of our country, but shall find no nation so pusillanimous as to follow our *disinterested* example. Considering, therefore, these propositions as merely nominal, intended only to enlarge the group and give diversity to the picture, I shall leave them without further animadversion, and proceed to investigate the resolutions levelled at the fame, the honor, and the reputation of General Andrew Jackson; and, through him, at the President, under whose orders he acted, and by whom he has been sustained and vindicated.

"I hold it to be the indispensable duty of every tribunal, whether legislative or judicial, to examine with caution and circumspection into its jurisdiction and powers, on every question brought before it for adjudication; and this rule ought more particularly to be observed in cases involving personal rights and

interest, where the party to be affected by the decision is not permitted to answer in his own defence. I ask, then, sir, Has the House of Representatives, as a distinct and separate branch of Congress, the constitutional power to institute an inquiry into the conduct of a military officer, and to sentence him to be cashiered, suspended, or censured? I demand a satisfactory and explicit response to this interrogatory, founded on a reference to the Constitution itself, and not on the undefined notions of expediency in which gentlemen may indulge; and if it be not given, as I am very sure it cannot, *we* shall become the violators of that fair fabric of liberty, and erect a precedent more dangerous in its tendency than the multiplied infractions which have been so vehemently alleged against General Jackson, admitting them all the force and latitude which the most enthusiastic *censor* could desire.

"Sir, it is high time to bring back this debate to first principles, and to test our jurisdiction over this case by a recurrence to the structure of the government of which we are a component part. Let us pluck the beam from our own eyes before we seek to expel the mote which gentlemen seem to have discovered in the vision of General Jackson. The sages and patriots who established the foundation of the republic have, with a wisdom and forecast bordering on inspiration, carefully marked and distributed the powers delegated in the Constitution to the Federal Government among the several departments, legislative, executive, and judiciary. No principle is better settled or more generally conceded than that the powers properly belonging to one of these departments ought not to be directly administered by either of the others. The violation of this maxim leads, by inevitable results, to the downfall of our republican institutions and the consolidation of all powers in that branch which shall possess the strongest influence over the public mind. Upon the independent exercise of the powers confided to each department, uncontrolled, directly or indirectly, by the encroachments of either, depends the security of life, liberty, and property, and the stability of that Constitution which is the pride of our country and the admiration of mankind.

"The honorable gentleman from Georgia has adverted to the opinions of the immortal author of the letters of Publius, the late Chief Magistrate of the United States; and the honorable Speaker has also invited our attention to that great constitutional lawyer. They triumphantly ask, What would he say on the present question, were he a member of this House? I will not follow the example of these gentlemen by substituting declamation for historical truth, or vague surmises and assumed premises for record evidence; but while I accord to the distinguished statesman and patriot, whose exertions so eminently contributed to the establishment, and whose exposition of its fundamental principles cannot be too highly appreciated. All the merit of his useful life was devoted to the public service, guided by wisdom, virtue, and integrity; and I appeal with pleasure and confidence to his able pen, in support of the position which I have advanced, and which I deem an important point in the case under consideration. In the view taken by Mr. Madison of the 'meaning of the maxim which requires a separation of the departments of power,' he repels the argument of the opponents to the adoption of the Constitution, founded on the apprehension of executive supremacy over the legislative and judiciary, which, it was contended, would ultimately render that branch the sole depository of power, and subject the people of this country to the despotic will of a single individual. Comparing the powers delegated to the executive with those granted to the legislature, and the probable danger of an assumption by either of the functions appertaining to the other, he says: 'In a government where numerous and extensive prerogatives are placed in the hands of a hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic, where the

executive magistracy is carefully limited, both in the extent and duration of its power, and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with intrepid confidence in its own strength, which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be pursuing the objects of its passions by means which reason prescribes ; it is against the enterprising ambition of this department that the people ought to *indulge all their jealousy*, and exhaust all their precautions.

" ' The legislative department derives a superiority in our government from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greatest facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments.'

" The correctness of the reasoning and predictions of this great and good man, who is called by the honorable Speaker the Father of the Constitution, has been often demonstrated in the practical operations of this body, and never more forcibly than on the present occasion. Scarcely a session of Congress passes without some effort to enlarge the scope of our powers, by construction or analogy ; and unless these systematic advances in this House to crush the co-ordinate departments, by an unlimited exercise of authority over all subjects involving the general welfare, be resisted with firmness and perseverance, they will, at no distant period, eventuate in the destruction of those salutary checks and balances so essential to the duration of our happily-formed government, and to the security of civil and political liberty. I deprecate every measure calculated to establish a precedent which, in its effects, may lead to such dangerous consequences. An enlightened statesman has said that the concentrating of all the powers of government in the legislative body is of the very essence of despotism ; and it is no alleviation that these powers will be exercised by a plurality of hands and not by a single one.

" An *elective despotism* was not the government we fought for ; but one which should not only be founded on free princi-

ples, but in which the powers of sovereignty should be so divided and balanced among the several bodies of magistracy as that no one could transcend its legal limits without being effectually checked and restrained by the others.

"Sir, whenever these principles shall cease to be respected by the councils of this country, I shall consider the grand experiment which we have made in the administration of a government of limited powers, founded on a written instrument, in which they are specified and defined, as altogether abortive and as forming strong proof of the regal maxim, that man is incapable of self-government. If honorable gentlemen mean anything by the reverence which they profess to feel for the Constitution, I conjure them to look to its provisions, and forbear to adopt a measure in direct violation both of its letter and spirit. By Article II., Section 2, it is provided that 'The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into actual service'; and by the 9th article of the 1st section Congress is vested with power to 'make rules for the government and regulation of the land and naval forces.' Congress has long since fulfilled this duty: rules and articles of war have been sanctioned, and have continued to govern the army, from its organization up to the present time; in these the great principles of subordination and responsibility are graduated and established, from the commander-in-chief down to the most petty officer and common soldier. The President is placed by his country at the head of its physical force, 'to execute the laws of the Union, suppress insurrection, and repel invasion.' He is the ultimate tribunal to decide all questions touching the operations of the army, and the conduct of the officers who compose it. If there be any power, clearly and exclusively belonging to the Executive, it is that which pertains to the command of the army and navy of the United States. Our whole system of laws recognizes it, and until this extraordinary attempt to erect the House of Representatives into a court-martial, with a view to cast an indelible stain on the character of General Jackson, without a fair and impartial trial, in which he might confront his accusers and be heard in his defence, no instance can be

shown, since the foundation of the Government, where the President has been interrupted in the full exercise of his legitimate authority over the military officers under his command. The abuse of this power, or the improper direction and application of the public force, by the Chief Magistrate, or by any subordinate officer with his privity and assent, in a manner or for the accomplishment of objects dangerous to the liberties of the people or subversive of the laws and Constitution of the Union, will find a ready and suitable corrective in this House, by an application of its power to originate impeachments against the President, Vice-President, and all civil officers, for treason, bribery, or other high crimes and misdemeanors. In this sense only can we be regarded as the grand inquest of the nation, and not to the unlimited extent for which gentlemen have contended. The power to impeach the President is expressly delegated ; all other officers are liable to the same scrutiny ; and the total omission, in the article of the military department, is, to my mind, conclusive evidence that they were never intended to be subject to the control of Congress, except in the usual course of legislation, under the power to raise and support armies. And this opinion is strengthened by the clause of the Constitution directing Congress to provide for the *government* and *regulation* of the land and naval forces. The principle of official responsibility is to be found in every page of the Constitution : not a vague, uncertain responsibility, but that which is unequivocal, certain, and definite. We are answerable, at stated periods, to the people, by whom we have respectively been chosen. The President is accountable to the nation at large, at the expiration of his term of service ; and in the mean time we hold a salutary check over his ambition, if he evince such a disposition, by means of impeachment ; in like manner the whole civil department may be punished for a wanton prostitution of their official functions. The military and naval officers who command our army and navy are responsible directly to the Executive, who is their chief, and, through him, indirectly to the representatives of the people. Every link in the chain is essential to the beauty and symmetry of the whole ; and, if preserved unbroken, affords the most ample security against

any usurpation of power, without a prompt and efficient remedy to detect and restrain it.

It is now proposed to make this House the focus of every power granted to the Federal Government; to mount the ramparts which separate the departments, and compel every man who holds a commission to bow submissively to the gigantic strength of this numerous assembly. Those whom we cannot impeach we will *censure*, and record their names as fit objects for the scorn and detestation of posterity. Already we hold the purse and the sword of the nation. All legislation must receive our concurrence, in connection with the President and Senate, before it has the force and effect of law. The treaty-making power may be controlled by us, where an appropriation is required to fulfil the contract; the judiciary is at our feet, both in respect to the extent of its jurisdiction and the liability of its members to the summary process of impeachment; the President and heads of department, foreign ministers, and the whole catalogue of civil officers, stand in awe of our frowns, and may be crushed by the weight of our authority. I ask, then, sir, if the officers of the army and navy are rendered subservient to us, as a censorial, inquisitorial body, whether it will not amount to the 'very definition of despotism.' Yes, sir, we shall, if these resolutions pass, bear testimony of the soundness of the political axiom, that it is 'against this department that the people ought to indulge all their jealousy, and exhaust all their precautions.' But the Constitution, in this respect, has received a construction almost contemporaneously with its adoption. As early as the year 1792 a resolution was submitted, by a distinguished member from Virginia in the House of Representatives, *requesting* the President to institute an inquiry into the causes of the defeat of the army under the command of Major-General St. Clair. The agitation produced by that momentous disaster seemed to demand an investigation of the conduct of the commanding general. A great public calamity is always calculated to awaken feelings which, for a moment, usurp the empire of reason, and lead to excesses which sober reflection would condemn. It was not, therefore, wonderful that a man of the soundest intellect and most enlightened understanding

should have felt it his duty to call the attention of the President to a subject so deeply interesting to the country, and to *request* an inquiry into the causes of that signal and unfortunate defeat. The proposition was fully discussed, and finally rejected by a large majority, on the ground that it was an unwarrantable interference with the constitutional functions of the Chief Magistrate. The substance of the debate may be found in the newspapers of that day; and among those who objected to the measure are the names of Madison, Ames, Baldwin, and many others who participated in the formation of the Constitution, and who were, consequently, better qualified to give to it a sound interpretation. A committee was subsequently appointed to inquire into the expenditure of the public money in that campaign, and other subjects of a general nature connected with the *legislative* duties of Congress. Again, in the year 1810, a committee was raised to inquire into the conduct of General James Wilkinson, in relation to a variety of charges which had been publicly made against him; they were authorized to send for persons and papers. The general was notified of their sittings, allowed to attend in person before them, to cross-examine the witnesses, to confront his accusers, to exhibit evidence in his defence, and make such explanations as he might think necessary to a vindication of his conduct. The committee, after a very laborious investigation, simply reported the facts to the House, who resolved that the same be transmitted to the President of the United States. No opinion was expressed or intimated as to the guilt or innocence of the general; no request was made to the President to institute a court-martial, but he was left to the exercise of his own discretion, unbiassed by the slightest indication of the impression which the development had made on the House of Representatives. The result we all know was that a general court-martial was immediately convened, and General Wilkinson was honorably acquitted. Both principle and precedent, therefore, combine in recommending a rejection of these resolutions, which claim for this House a power, not merely to *request* another department to perform a particular duty, but assume the right to adjudicate the case, and sentence an officer to irretrievable infamy, with-

out a hearing, and without appeal, save only to his God and the purity of his own conscience. Permit me, sir, to present to the view of the committee some of the unavoidable consequences which will flow from this premature and unauthorized proceeding. We announce to the President, and to the nation, that General Jackson, in the prosecution of the Seminole War, has violated his orders and broken the Constitution of his country, and that, in the trial and execution of Arbuthnot and Ambrister, he has been guilty of the horrid crime of official murder. We, on the part of the whole people, become the informers, and thereby impose on the President, as commander-in-chief of the army, indispensable obligation to adopt one of two alternatives —either to dismiss from the service that officer, under our denunciations, or to assemble a regular court-martial to investigate these charges according to the forms prescribed in the laws enacted for the government of the army of the United States. The latter course, being the one best adapted to the attainment of justice, would in all probability be pursued. He details a court-martial, composed of high-minded military men ; charges and specifications are exhibited ; and the general for the first time is allowed to answer to them—guilty or not guilty. He is put on his trial, and at the very threshold he is informed that he has already been found guilty by the highest tribunal in the Union—the representatives of the American people. He nevertheless proceeds in his defence, and is ultimately convicted and cashiered. Would not history record such a conviction as the result of our prejudication of the case ? Would not the whole world attribute the downfall of this man to the monstrous persecution and flagrant injustice of the ungrateful country which he has so nobly defended ? Yes, sir, to the latest posterity we should be regarded as having passed an *ex parte* decree of condemnation, which the court-martial were bound to register, to secure themselves from similar animadversion. But let us suppose that, unawed by the imposing *dictum* which we shall have pronounced, the court-martial acquit the general of the several charges and specifications on which he has been arrested. We should then have the military of this country arrayed against this body : we, acting under the solemn obligation of our oaths,

declare that General Jackson has been guilty of high crimes and misdemeanors ; we are unable to tear from him his epaulettes ; and when tried by his peers, our opinions are scouted, and he is maintained in the high rank from which we would have degraded him. In such a controversy the only arbiter is force. Sir, take either horn of the dilemma, and we have abundant reason to shun the consequences which must follow the adoption of the proposed resolutions.

Our total inability to enforce the will of the majority demonstrates most clearly the absence of the right to express that will ; for, whatever any branch of the government can constitutionally decide, the means necessary to carry its decision into execution can never be withheld or questioned. Sir, I have been not a little amused at the evasive contortions of honorable gentlemen, who, to avoid the perplexing difficulties by which they are enveloped, gravely affirm that neither the report of the Military Committee nor the resolutions respecting the seizure of the posts of St. Marks and Pensacola and fortress of Barancas contain a censure of General Jackson ; that they are harmless, inoffensive expressions of opinion upon the passing events relating to the state of the Union. I put it to those gentlemen—for the argument has been resorted to by all who have spoken—whether, if I were to address either of them in conversation, and say, in the language of the propositions before the committee, ' Sir, you have violated the Constitution of the United States, and of course you are perjured. You have sentenced to death and executed two of your fellow-men without a fair trial, and contrary to all law, human and divine, consequently your hands are stained with their blood.' Would they calmly reply that my expressions conveyed no censure on them, and were not repugnant to their feelings or character, nor inconsistent with contemporaneous assurances of my high respect and consideration ? Common-sense revolts at conclusions so ridiculous, drawn from such premises. Add to this the express charge of a violation of orders, which the President, it seems, is not competent to determine for himself, and I may venture to defy any gentleman to cover a military officer with more odious epithets, or mean, vindictive censure. No man, however elevated his station, can withstand the

overwhelming force of such an assault on his reputation, coming from this august body, after mature and solemn deliberation. The exalted mind of General Jackson would prefer even death to this fatal blow, aimed at that which is more dear to him than life—his well-earned fame and irreproachable honor. Sir, the immortal Washington was charged with a violation of the Constitution, in drawing money from the treasury to pay the militia who served in the campaign against the insurgents in 1794, without an appropriation made by law; but at that day the *secret* of our power to censure had not been discovered, and the transaction passed without animadversion. It has remained for *us* to put in motion this new engine of inquisitorial crimination, and to wield it against a man whose arm was never extended but in defending the liberty and safety of his country against the complicated enemies by whom it has been assailed, and whose pure and unblemished patriotism, combined with his invincible valor, fortitude, and perseverance, have shed over his brow a resplendent ray of glory which neither clouds nor tempests can obscure, so long as virtue shall predominate over the envious and malignant passions of the human heart. Yes, sir! we are importuned to execrate the bloody deeds of the Seminole War, to *chant requiems* over the tombs of Arbuthnot and Ambrister, and to mourn over the wreck of our fallen Constitution; and, in an instant, as if by enchantment, the horrid picture vanishes from our affrighted imaginations, and eludes even the grasp of keen-eyed malice, and we hear the moral integrity and innocence of all these transactions announced from the same lips which utter their condemnation. The motives and intentions of General Jackson are eulogized and applauded by his most inveterate accusers. All the errors ascribed to him, and for which honorable gentlemen are prepared to immolate his character, and render his name, hitherto so dear to his countrymen, odious and detestable, are attributed to the impetuous ardor of his zeal to promote the general good, and give peace and security to our defenceless frontier.

He fills a space in the public eye, and commands a portion of the affection and confidence of his fellow-citizens too copious and extensive to be tolerated by the sharp-sighted politician,

whose splendid eloquence fades and evaporates before the sunshine of renown lighted up by the unparalleled achievements of the conqueror of the veterans of Wellington. These modern casuists endeavor to magnify an *unintentional* violation of the Constitution into a crime of the blackest enormity, which can neither be extenuated nor forgiven. Are they willing to make this system of political ethics applicable to themselves, and to have their names specified on the journal as culprits at the bar of an offended people, stamped with infamy and disgrace, if at any time they have, and with the best intentions, given a vote which, on a review of the subject, was found to conflict with some provision of the Constitution? What member of this House can say, with certainty, that he has, on all occasions, construed the Constitution correctly? And who among us would be satisfied to stake all his hopes and prospects on the issue of an investigation, which, disregarding all respect for the purity of the motive, should seek only to discover an inadvertent error, resulting from a defect of judgment in the attainment of objects identified with the best interests of the nation? Sir, if I mistake not, the honorable Speaker, and several other gentlemen who have manifested great solicitude and displayed a torrent of eloquence to urge the expediency of passing the proposed censure on the conduct of General Jackson, and who unhesitatingly admit the innocence of his intentions, would be placed in an unpleasant situation by the operation of the rule which they are anxious to prescribe in this case. A few short years past, these honorable gentlemen were the champions who resisted the renewal of the charter of the old Bank of the United States. At that day they held the original act of incorporation to be a usurpation of power, not delegated to Congress by the Constitution, and to their exertions we were indebted for the downfall of that institution. The same distinguished members, at a subsequent period, acting under the high obligations of duty, and the solemnity of their oaths to support the Constitution of the United States, aided and assisted in establishing the *mammoth bank*, which threatens to sweep with the besom of destruction every other moneyed institution in the nation into the gulf of ruin and bankruptcy. It will not be pretended

that both these *opposite* opinions were correct; and yet I should be very sorry either to impugn the motives which actuated those gentlemen in the instance referred to, or to pass a *censure* on their conduct for an *unintentional* violation of the Constitution calculated to withdraw from them the confidence of their constituents. There was a time, Mr. Chairman, when the Republican phalanx in every quarter of the Union regarded the specification of powers in the Constitution as the limitation of the grant, within which every department ought to be strictly confined. But at this day we are told that this literal construction of the instrument is too narrow for the expanded views of an American statesman—mere 'water-gruel,' insipid to the palate, and requiring the addition of a little *fuel* to give it energy and action to conduct this nation to the high destinies which await it. No power can be called for by an existing exigency, or a favorite system of policy, which, according to the doctrines now advanced, may not be found necessary and proper to carry into effect some one of the specified powers in the Constitution. The flexible character of man and the frailty of human nature afford an ample apology for these oscillations, and wretched indeed would be *our* situation if crime consisted in error, unaccompanied by the pre-existing will to perpetrate it. No man who respects his feelings or his character would accept a public trust on such conditions. As well might we censure the Supreme Court for having given a decision which we deemed contrary to the Constitution, and where no corruption could be alleged against the judges who pronounced it, which is an essential ingredient to constitute an offence for which a judicial officer is liable to impeachment. In such a case *our censure* might be retorted by an attachment for contempt, and the honorable Speaker, representing the majesty of this House, would be compelled to answer the charge by *purgation*, or otherwise, as the wisdom of the House should direct. I mention this to show the absurdity and inefficiency of every attempt to transcend the powers secured to us by the Constitution. Sir, I am sick to loathing of this incongruous, novel, and impotent effort to wound the sensibility of a hero, who has sacrificed whatever of health or fortune he possessed, and staked his life in common

with the soldier by whose side he fought, that our exposed and unprotected frontier might once more repose in peace and tranquillity, undisturbed by the midnight yell of the merciless savage.

"The hero of New Orleans wanted not a petty Indian war to satiate his ambition, or add fresh laurels to the wreath already bequeathed to him by his country. It was a war of hardships, fatigues, and privations, in which for himself he had nothing to hope but the consolation of having accomplished the object for which he took the field, and of receiving the approbation of the President, to whom alone he was responsible for all the incidents of the campaign in which he participated. Of this reward, so well merited and so freely bestowed, we now seek to rob him, by fulminating resolutions and vindictive eloquence, against what honorable gentlemen are pleased to call a *patriotic, unintentional* violation of the Constitution."

The committee then rose, reported progress, and asked leave to sit again; and the House adjourned. On the following day Mr. Poindexter resumed his argument. "Mr. Chairman, I wish it to be distinctly understood that the view which I had the honor to take of this subject on yesterday was not intended to shield the conduct of General Jackson from the strictest scrutiny. Even before this unconstitutional court, unheard and undefended, he fears not the penetrating touch of the most rigid investigation. He asks no palliatives, no exemption from responsibility. He needs only that protection which justice, sternly administered, affords to every virtuous man in the community. The argument was directed to the judgment of the House, in reference to its own legitimate powers as a separate branch of the National Legislature. These consist of the right to judge of the elections and returns of our own members, to determine the rules of our own proceedings, to punish members for disorderly behavior, and, with the concurrence of two-thirds, to expel a member; and they are all the ultimate powers of the House of Representatives. Allow me, sir, in closing my remarks on this point, to call the attention of the committee to an opinion which fell from the venerable George Clinton a

short time before he took a final leave of this world and was deposited among the tombs of the fallen heroes and patriots who, with him, had achieved the independence of their country. Placed in the chair of the Senate of the United States, he was required, by an equal division of that body, to give a casting vote on the question touching the power of Congress to incorporate a national bank. It will be recollected that he negatived that proposition, and in support of his vote advanced the reasoning by which he was influenced, which he concluded with the following judicious and pertinent admonition: 'In the course of a long life, I have found that government is not to be strengthened by an assumption of doubtful powers, but by a wise and energetic execution of those which are incontestable; the former never fails to produce suspicion and distrust, whilst the latter inspires respect and confidence.' The sentiment is worthy of the head and the heart which dictated it, and if properly improved will constitute a rich legacy from that inflexible patriot to those who may follow in the path of legislation. I earnestly recommend it to the favorable consideration of this body."

Mr. Poindexter continued. "I now, sir," said he, "proceed to the topics already discussed with such distinguished ability. Perhaps I shall be guilty of a useless trespass on the patience of the committee in attempting to give them a further examination. The causes and origin of the Seminole War, its prosecution and final termination, have resounded in our ears until every feeling is paralyzed, and all the avenues to conviction are closed by the frost of cold indifference or the fatal spell of unconquerable prejudice. Under such discouraging circumstances I enter with diffidence on the task of exploring the ground over which so many have trodden before me. Urged on, however, by a sense of duty, and of the important results which may flow from the decision to be pronounced on these interesting subjects, I claim the indulgence of the committee while I submit my opinions in relation to the principles and facts involved in them. The causes of this war stand first in the order of the discussion: upon a clear understanding of these materially depends the justification of the conduct observed in the prosecu-

tion of the war. Many of the rights which appertain to a belligerent in a defensive, cannot be claimed in an offensive war, and this is more particularly the case in respect to that which is now the subject of consideration. The honorable Speaker, aware of the necessity of affixing the guilt of the contest on the United States to sustain his conclusions, has labored to excite our commiseration for the poor, degraded, half-starved, persecuted Seminoles, while he charges the people of Georgia with robberies and murders on their innocent, unoffending neighbors; who, in their own defence, were compelled to take up arms and retaliate the injustice which had been practised against them. To these outrages, and the acquisition of Indian lands by the treaty of Fort Jackson, combined with the dictatorial terms of that treaty, I understood the honorable gentleman to attribute the war which has produced so much excitement in this House. Sir, I apprehend no gentleman on this floor is better acquainted with the origin of this war than the honorable member from Georgia who opened this debate, and if he is willing to admit the charge of robbery and murder made on his constituents, be it so. For one, I can only say, that no satisfactory evidence has been adduced of the fact, and I am therefore bound to controvert it."

[The Speaker explained: He meant only to express his *fears* that such was the fact, without intending to use the strong language which Mr. P. had ascribed to him.]

Mr. P. proceeded: "Sir, I have the speech of the honorable gentleman before me; it contains not only the substance of this charge on the people of Georgia, but it refers, *in extenso*, to a paper signed by the chiefs of ten towns, addressed to the commanding officer at Fort Hawkins, specifying their grievances and the wrongs committed on them by the Georgians, for which they demanded an atonement. This paper the honorable gentleman has characterized as an artless tale, told in language pathetic and feeling, which carried internal evidence of, at least, the belief of the authors of it that they were writing the truth. It complains that the 'white people carried off all the red people's cattle, and still continued to do so; that the whites *first begun;* that, three years since, the whites killed three In-

dians, and, since that, three others ; that the whites stole their horses, and all they had, and killed three more Indians ; to which they have since added six more.' Satisfaction is said to have been taken for all except three of the Indians alleged to have been murdered by the whites. From this summary of the paper referred to in support of the argument of the honorable Speaker, and the weight which he has attached to it, I think it must be manifest that I have not misconceived or misstated his premises. And I repeat, that it is not for me to interfere between the honorable gentleman from Georgia, whose constituents have been thus implicated, and his honorable friend, who imputes to them such disgraceful conduct. But, sir, I cannot forbear to notice this 'artless tale of truth,' which is the sole evidence of the outrages complained of, and on which so high an eulogium has been pronounced. Whence came this manifesto ? Sir, it emanated from the pen of that infamous foreigner, Arbuthnot ; it is one of the multitude of crimes which he expiated on the gallows, and is second only in impudence and falsehood to the famous proclamation of his predecessor, Colonel Nichols. Its style is artful and insinuating, its import pregnant with all the horrid deeds excited and consummated by the mischief-meditating hand of that monster whose fate is so deeply deplored within these walls. And is the testimony of this man, the avowed enemy of the United States, the instigator of Indian hostilities by means of intrigue and seduction, whose occupation was misrepresentation and deception, to draw the unlettered savage into the vortex of impending ruin ; whose mind was the dark abode of vice, in all its hideous deformity, worthy of the panegyric which it has received, and of the confidence reposed in it by the honorable Speaker ? Shall we dishonor the American name upon his authority, masked by the nominal signatures of Ten Towns, the dupes of his insidious policy, who knew no more of this 'pathetic and feeling narrative, this simple tale of truth,' than he thought proper to communicate to them ? No, sir, I trust we shall not. We must look to other and more respectable sources for the concatenation of events which resulted in the Seminole War : to these I shall presently call the attention of the committee. But the

treaty of Fort Jackson falls under the severe denunciation of the honorable Speaker, and the war is said to have had its origin in the imperious, haughty, and dictatorial spirit of that instrument. Let us advert, for a moment, to the history of this transaction, and bottom our reasoning on facts, and we shall be less liable to the errors inseparable from a superficial view of any subject. The Creek Indians, toward whom the United States had, for more than twenty years, observed the most pacific policy, stimulating them to industry and agricultural pursuits, and inculcating on their minds the benefits of civilization, seized on the first favorable opportunity which offered, when we were contending for our existence as a sovereign and independent nation, against the undivided strength of Great Britain, to take up arms against us and make a common cause with the enemy ; actuated to this measure, no doubt, by British and Spanish counsellors, and supplied, as we know, with the means of carrying on the war at Pensacola. While they were in our power, weak and unprotected, we cherished and fed them, we introduced among them implements of husbandry, taught them to cultivate the soil, and the use of the wheel and the loom. We respected their territory, and prohibited all intrusions upon it. When they found us hard pressed by the most powerful nation in Europe, we asked not their assistance, but advised them to stay at home and remain in peace ; we told them not to fight on either side. But the demon of foreign seduction came among them ; false hopes were infused into their minds ; promises of British aid were made to them ; the prophetic delusion of invincibility nerved the warrior's arm, and the tomahawk and scalping-knife were raised against their benefactors ; wielded with all the fury of savage barbarity, rendered still more ferocious by the influence of superstition and fanaticism. Such was their ingratitude, and such the return for our magnanimity ! The bloody contest ensued. The massacre at Duck River, at Fort Mims, and the butchery of our frontier inhabitants, without regard to age, sex, or condition, will long be remembered by the afflicted friends and relatives who survive the unfortunate victims, whose innocent blood stained the guilty hand of the inexorable savage. The melancholy story of their wrongs will be handed down to

the latest generations. I hope they will not be forgotten by their country. At this momentous crisis Jackson sprang from the retirement in which his vigorous mind had been permitted to slumber, and contemplated, not without emotions of painful regret, the disasters which marked the progress of our armies. He took the field, at the head of the hardy and intrepid sons of Tennessee—his faithful companions in arms. They penetrated the swamps and the forests, enduring, with manly fortitude, every hardship and privation which the most vivid imagination can conceive, or human language portray. The god of battles was on their side ; victory attended their steps ; they conquered. The vanquished enemy dispersed ; a part of them fled into Florida, to throw themselves under British protection, and the residue surrendered to the mercy of the conquering general. And the articles of *capitulation*, signed on the 9th of August, 1814, has been called a *treaty ;* a *chef d'œuvre* in diplomacy, cruel and insulting in its terms, to a miserable fallen foe ; derogatory to the national character, and the main cause of the recent war with the Seminoles. I have yet to learn that the subjugation of one tribe of Indians, and the terms of their submission, is justifiable cause of war, on the part of another and a distinct tribe. But, independent of this objection to the ground assumed by the honorable Speaker, I contend there is nothing in these articles of capitulation either unreasonable or incompatible with the sound morality which, it seems, so eminently distinguished the commissioners at Ghent. Let it be remembered that a conquering general in the field asks nothing of the enemy as a matter of courtesy. His business is to demand justice, and enforce a compliance at the point of the bayonet. And what are the conditions on which General Jackson agreed to receive the submission of an enemy who had made on the United States an unprovoked war, in aid of a contemplated blow to be struck by Great Britain, on the great emporium of our Western commerce ? He demands 'an equivalent for all expenses incurred in prosecuting the war to its final termination ; that the Creek nation abandon all intercourse with the British and Spanish posts—those infernal fiends who had excited them to war'; that they acknowledge the right of the United States

to establish military posts and trading houses, and open roads, within their territory, and to the free navigation of their waters; that they surrender the property taken from citizens of the United States and friendly Indians, in return for which the property of those who submitted was to be restored; and that the instigators of the war, whether foreigners or prophets, if found within their territory, should be captured and surrendered. The United States voluntarily undertake to maintain those deluded, infatuated people, until they shall be enabled to support themselves by their own labor.' Sir, I will thank any gentleman to designate which of these stipulations he would have omitted. Are they not all essential to a permanent peace and a just indemnification for the injuries we had sustained from these red allies of Great Britain? Yes, sir; nor could General Jackson have done less, in the faithful performance of his duty; and less could not have been expected by a conquered tribe of Indians under similar circumstances.

"Sir, I will readily concede to honorable gentlemen that, if war was made on Spain, either by the orders of the President or by General Jackson, without the authority of Congress, it amounts to a violation of the Constitution, and the most severe punishment, and not mere *censure*, ought to await the guilty hand which aims a blow at the tree of liberty, on the soil where alone it is permitted to grow and flourish. But I deny that an act of war either has been or was designed to have been committed by General Jackson, in any part of his proceeding in Florida. By war I wish to be understood to mean that state of things which puts one nation in collision with another, which arrays the people of one sovereignty against the people of another sovereignty, and not such acts as may not eventuate in a rupture between powers in amity with each other. The *maxim* must be reached, or the constitutional power of Congress to declare war remains inviolate. Suffer me to illustrate this postulatum, by showing its analogy to another and a more familiar subject. Suppose a bill suspending the *habeas corpus* is proposed to this House, at a time of profound peace, both at home and abroad; every gentleman will admit that the passage of such a bill would violate an express provision of the Constitu-

tion. I ask, if it should pass the first and second readings, and be ordered to be engrossed and read a third time ; if, on the question, Shall the bill pass ? it is rejected, whether any of the incipient proceedings amounted to a breach of the Constitution ? I presume that it will not be contended that they did. The violation of the instrument begins with the operation of the measure which it prohibits. So neither is an incipient step taken by a subordinate authority under the government, which bears the semblance of hostility to a foreign nation, war, until it passes the ordeal of the ultimate power of both countries, and is deemed by them not susceptible of amicable and honorable explanation and amends. Let us test the conduct of General Jackson by these plain and simple rules, and it will be found that he has neither violated the Constitution nor compromitted the peace of the nation.

"I have already attempted to prove to the committee that the conduct of Spain in relation to our savage enemy justified the entrance of our army in her territory, and the occupation of the posts of St. Marks and Pensacola and the Fortress Barancas ; and I will admit, for argument's sake, that these latter acts were not strictly justifiable, and that Spain had a right to complain of them ; and yet I say, they did not amount to the definition of war, and consequently that General Jackson is not chargeable with having usurped the powers of Congress. To sustain this position I rely on the practice of the most enlightened European governments, in cases similar in their character, and on the effect of the measures upon the subsisting relations between Spain and the United States. The European precedents to which I shall refer may be found in the celebrated letter of Mr. Madison to Mr. Rose, on the subject of the attack on the American frigate Chesapeake by the British ship Leopard. I beg leave to read them in the order given them in that correspondence."

Here Mr. Poindexter read at length from Mr. Madison's letter an account of the expulsion of the English salt manufacturers from Turk's Island, in 1764, by a detachment of French troops from St. Domingo ; and the demand for reparation on the part of the English, and its concession by the French. Also

an account of the attack upon the English settlements at Nootka Sound, and the capture of English vessels there by the Spaniards, in 1789, and which resulted in reparations being demanded and promptly afforded. And lastly, the expulsion of the British settlers from the Falkland Islands, in 1770, by Spanish troops under the orders of the Governor of Buenos Ayres, for which satisfaction was also demanded and reluctantly given.

Mr Poindexter then proceeded :

" In these instances force was resorted to : actual violence used, blood spilled, vessels captured, whole settlements broken up and destroyed ; and yet the proud and haughty monarchs of England, France, and, I may add, of Spain, at that day did not consider either of them as actual war, but occurrences open to fair and candid explanation and honorable amends ; which, being demanded, resulted in the preservation of peace between the parties concerned.

" These were direct acts of hostility, committed by the military of one power against the subjects of the other without a previous declaration of war, and therefore more offensive to the dignity and honor of the sovereign than the temporary occupation of a town or fortress, in the prosecution of a war with another nation, to whom the same privilege had been granted. According to the practice of nations, therefore, the proceedings at St. Marks and Pensacola cannot be regarded as deciding the question of peace and war between Spain and the United States, waiving all the circumstances which so fully justify the commanding general. Neither government understood them as amounting to a change of the amicable relations which existed prior to these occurrences, and which it was their mutual desire to preserve. Spain demanded the restitution of the posts in the possession of the American troops ; they were ordered to be restored—Pensacola unconditionally, and St. Marks on the appearance of an adequate force to protect it from the savages. The Spanish minister, in the name of his master, also demanded the punishment of General Jackson ; he was told that the President would ' neither inflict punishment nor pass a censure ' on the general for conduct which found its justification in the perfidy and duplicity of Governor Masot and the officers of his

Catholic Majesty in Florida. We, on our part, demanded the punishment of these Spanish officers; they have neither been punished nor their conduct formally investigated.

"Thus the affair has terminated, to the satisfaction of both parties, so far as it is essential to the preservation of peace between the two countries. It did not originate in a disposition to produce a rupture with Spain, either on the part of the President or of General Jackson. Pizarro blustered for a while, published his protest, interdicted all further communications with this Government until proper explanations were made, and submitted the matter to the Congress of Aix la Chapelle, hoping to excite the sympathy of the allied sovereigns, and to obtain their interposition in behalf of Spain. He, however, in a few days so far subdued his resentment as to resume his usual correspondence and intercourse with Mr. Irving, our minister at Madrid. The Congress of Aix la Chapelle expressed no opinion on the subject; and Don Onis, the minister of Ferdinand at this place, has never for a moment ceased to fulfil his functions, without the smallest interruption; and so little was the respect which he paid to the letter of Pizarro, suspending further communications with the American Government, that he did not think it worthy of being officially made to the Secretary of State. He places the vindication of his master on ground totally different from that assumed in this House by those who defend his cause, in attempting to censure the conduct of General Jackson. He says, in a letter to Mr. Adams, of the 8th of July, 1818, 'It cannot be supposed that the Indians, against whom the American commander directed his operations, received protection in Florida. *They never received either favor or protection from the Spanish authorities, either within or without the territory under their jurisdiction.*' Speaking of the Governor of Pensacola, he alleges that he took every necessary precaution to prevent the Indians being supplied with arms and ammunition within his Majesty's territory. These facts being of public notoriety, *and impossible to refute*, there can be no excuse, pretext, or subterfuge offered for a series of such unheard-of outrages.

"And, sir, this is the true and only basis on which to rest

the slightest charge against the proceedings of General Jackson. It is a question of fact; and if Don Onis speaks the truth, in saying that the Indians received neither favor nor protection from Luengo or Masot, and that everything was done in their power to prevent their being supplied with arms or ammunition, and that it is impossible to refute these facts—then I say with him, that the American commander was censurable, and ought to be brought before a general court-martial. But, unfortunately for the Don, the evidence is all on the other side; and these facts, which he says 'it is impossible to refute,' are contradicted even by the officers themselves, whom he thus boldly defends. I contend, therefore, on the authority of the Spanish minister himself, that, the proof being against him, the conclusion falls, and General Jackson stands acquitted by Spain of all blame or censure for his occupation of St. Marks and Pensacola. The Chevalier Onis will not stoop so low as to put the issue of the controversy on the wire-drawn theories and ingenious sophistry with which he has been so *generously* supplied by honorable gentlemen who have participated in this debate. He takes the high and imposing attitude of *facts*, from which he deduces the innocence of the colonial authorities in Florida, and the consequent guilt of the American commander; and surely he ought to be allowed to shape the defence of his own *immaculate* master. On that ground I am content to submit the case to the decision of an impartial world. Sir, if the United States have been precipitated into hostilities with Spain by General Jackson, and the constitutional powers of Congress, in that respect, have been usurped, by whom has the war been recognized, and where are its effects to be seen or felt? Spain has given no evidence of a belief on her part that she is at war with us, or that she contemplates becoming so. We have disavowed all hostile intentions toward her. She has a minister resident at Washington, who is treated with every respect due to his rank, and who is now employed in the interesting duty of forming a treaty on the subjects which have so long remained unsettled between his sovereign and this country. We also have a minister of equal rank and dignity at Madrid, who receives there the most polite attention. No armies are in the field, no

fleets on the ocean, no appropriations required to carry on the war; but it is nevertheless the foundation upon which the whole arguments of the advocates of these resolutions is built, and all the dreams of our violated Constitution, with which we have been amused for the last three weeks, are predicated on this visionary war, which honorable gentlemen imagine to exist, for the sake of the argument, but which neither of the *feigned* belligerents acknowledge, and which is carried on without men, money, or ships, while both nations are under the singular delusion that they are in a state of profound peace! I have heard, sir, of wars in the moon, and I presume this must be one of that description.

"Mr. Chairman, I think it must be manifest to every candid mind, disposed to look at these events with an impartial eye, that no act of war has been committed against Spain; that none was ever intended; that our relations of amity with that nation have undergone no change; and that General Jackson has been most unjustly charged with a violation of the Constitution of his country. The total neglect of Spain for the last ten years to maintain her authority in Florida, and the facilities which it affords to our enemies, has compelled the Government of the United States to consider that territory open to our arms whenever the public safety required that they should be sent there; and the Spanish Government has no just right to complain of treatment which her own negligence and imbecility has imposed on us as a duty in self-defence.

"Permit me, sir, to call the attention of the committee to a measure which was adopted during the administration of President Madison, relating to that part of Florida which lies west of the Perdido, and which we claimed under the cession of Louisiana. Spain was in possession of the country, and contested our claim; a special mission had been sent to Madrid to negotiate a treaty of limits with that government, and the effort to effect that object was unsuccessful. Pending this question of title between the two governments, in the year 1810, President Madison issued a proclamation annexing the disputed territory to the present State of Louisiana, then the Territory of Orleans. That proclamation is in the following words:

"'Now be it known that I, James Madison, President of the United States of America, in pursuance of these weighty and urgent considerations, have deemed it right and requisite that possession should be taken of the said territory, in the name and behalf of the said United States. William C. C. Claiborne, Governor of the Orleans Territory, of which the said territory is to be taken as part, will accordingly proceed to execute the same, and to exercise over the said territories the authorities and functions legally appertaining to this office; and the good people inhabiting the same are invited and enjoined to pay due respect to him in that character: to be obedient to the laws, to maintain order, to cherish harmony, and in every manner to conduct themselves as peaceable citizens, under full assurance that they will be protected in the enjoyment of their liberty, property, and religion.'

"To carry the power vested in him into effect, Governor Claiborne was authorized to call in to his aid the regular troops of the United States on the Mississippi; and if these should be deemed insufficient, to call out the militia of the Orleans and Mississippi Territories, and to take *forcible possession* of the territory, if resistance should be made. The order was executed. The laws of the United States were extended to the country, by virtue of this proclamation, and at the time, and for more than one year afterward, a Spanish garrison remained at Mobile. This step was taken but a few weeks before the meeting of Congress, and communicated to both Houses at the opening of the session. An interesting and animated debate arose in the Senate on that part of the President's message. Parties were then marshalled; the opposition to the administration was systematic and uniform, and its friends were equally so. The proceeding was denounced as an unauthorized act of war on Spain; as a usurpation, by the Executive, of the power vested alone in Congress to declare war. The Constitution was said to be violated; the country menaced with all the horrors of war, both by England and Spain. The arguments used on that occasion by the old Federal party bear a strong resemblance to those which we have heard on the present occasion from the friends of these resolutions. I listened, sir, with great pleas-

ure, to a very able and eloquent speech delivered by the honorable Speaker, then a member of the Senate, in defence of this *executive measure*. He received my thanks, and I have no doubt the thanks of the nation, for the unanswerable and lucid views which he took of that subject. I hope the honorable gentleman will pardon me for the liberty which I take in reading a few sentences from that speech, to the committee. Their application to the recent occurrences in Florida will be readily perceived, conveyed in language much superior to any which falls within the compass of my humble capacity. 'I have,' said he, 'no hesitation in saying that if a parent country either cannot or will not maintain her authority over a colony adjacent to us; and if misrule and disorder prevail there dangerous to the Union, or menacing the peace of our frontier, or unfavorable to the execution of our laws, we have a right, on the eternal principles of *self-preservation*, to lay hold of it. *This principle alone, independent of any title, would justify the occupation of Florida.*' Sir, if the eternal principle of self-preservation alone would justify the occupation of that part of Florida, without any title to guard against a contingent danger, will it not apply with more than equal weight to a case of actual existing danger, when the frontier is deluged in the blood of helpless age and infancy? If misrule and disorder prevailed in that portion of the province, at the time we took possession of it, the same remark was applicable to Pensacola and its dependencies when that place was surrendered to the American forces. We were then at war with no Indian tribe who gained admission into the territory; we apprehended no immediate invasion from any quarter; and I ask the honorable gentleman, if that measure was justifiable on the reasonable probability of approaching hostilities, can he condemn General Jackson for a similar precaution, surrounded as he was by a combination of Indians and negroes, prepared to renew their deeds of cruelty and blood whenever the army under his command should retire within the limits of the United States?

"Let me not be told that we had a fair title to the country under the purchase of Louisiana; for, so far as it related to the national feelings of Spain and to the compromitment of our own

peace, it was sufficient that Spain was in the actual possession of the soil, and claimed a paramount right to the sovereignty over it. We forcibly wrested it out of her possession, and extended our laws, both general and local, to its inhabitants, by *proclamation*, and I am at a loss to distinguish that act from the military occupation of another district in Florida, on the same great principle of self-preservation. I accord my approbation to both measures, alike in their character and in their effects, and leave the honorable Speaker to show, if he can, in what consist the shades of difference which will authorize us to justify the one and censure the other. On various other occasions we have marched troops into Florida, and fought battles there, without exciting the smallest sensation in this House, on the score of a usurpation of its powers by the Executive. In 1812, Colonel Smith, at the head of a rifle regiment, was posted before St. Augustine; a detachment from his command was attacked and defeated by the Indians and negroes from the Spanish fort; he declared his intention of storming the place, but his troops were enfeebled by disease, and he retreated to the State of Georgia. A regiment of volunteers, commanded by Colonel Williams of Tennessee, likewise carried their military operations into that country. The Georgia militia have frequently been ordered there, in pursuit of hostile Indians. In 1814, General Jackson fought a battle in Pensacola, and dislodged the British force in the Barancas, who blew up the fortress on retiring into their vessels. Since that period the negro fort, so often mentioned, on the Appalachicola was attacked and destroyed by a combined land and naval force. All these events have passed in review before us, and never until now were they considered either war on Spain or a violation of the Constitution. But, sir, everything heretofore held sacred, both in principle and practice, must bend to this unprecedented scheme of passing censure on General Jackson, who has been *modestly* compared to Alvear, Cortez, Pizarro, and Hyder Ali, by an honorable gentleman from New York (Mr. Storrs), and at the same time the gentleman assured us of the very high respect in which he held the character and services of that distinguished hero! Sir, there are some men too high in the estimation of

their fellow-citizens to be permitted quietly to enjoy the distinction conferred on them by a grateful country. Had General Jackson been less useful to the nation he might have escaped the mortification of the denunciations uttered against him on this floor."

Mr. Poindexter continued. "Sir," said he, "I have been mortified and disgusted at the sickly agonies and sympathetic effusions which have been so often repeated by honorable members on the subject of the trial and execution of the instigators of the Seminole War, Arbuthnot and Ambrister. Inflated appeals to our humanity and magnanimity have rung through this hall, to excite our commiseration for these guilty men: they have failed to reach either my judgment or the feelings of my heart; my sympathies, thank God, are reserved for the bleeding and suffering citizens of *my own country;* and objects of that description in abundance are exhibited to our view, in the narrative of events connected with the short but bloody career of these foreign incendiaries in Florida. The punishment inflicted on them was more than merited by the enormity of their crimes; the example, I trust, will be a salutary warning to British agents on the whole extent of our Indian frontier; and if future outrages of the same kind should be practised, we owe it to the safety and honor of our country to retaliate on the offenders with the utmost rigor and severity, until the subjects of foreign nations shall be taught to dread our vengeance if they do not respect our rights. Sir, it is not my intention to enter into a detailed argument on the various technical objections which have been resorted to by gentlemen skilled in the nicety of special pleading, to show that a count or an *innuendo* is wanting in the declaration, or that judgment has not been pronounced according to the forms in such case made and provided. Such trash may serve to supply the vacuum of empty declamation; but I can never consent to convert this great political theatre into a court of errors and appeals, sitting to scan the record and regulate the proceedings of inferior tribunals. My views are directed to measures in reference to their operation on the general welfare of my country, and whenever that effect is produced I would not retrace the step, unless the

honor of the nation imperiously demanded the sacrifice. The proceedings of the special court convened by General Jackson on this occasion have been fully and ably defended by honorable gentlemen, whose profound knowledge of military science and the practical usages of war gives to their opinions and arguments the weight of authority, and supersedes the necessity of further investigation. If, indeed, errors in point of form were committed by the court, or if they misunderstood the powers vested in them by the order of the commanding general, it does not become the dignity of this House to ascribe these irregularities to General Jackson ; it is to the general order we must look for a definition of the duties which the court were required to perform ; they were instructed to 'record the documents and testimony in the several cases, and *their opinion* as to the guilt or innocence of the prisoners, and what punishment, if any, should be inflicted.' Call it, therefore, a court-martial, or by whatever other name you please, these were the powers conveyed to it, and no assumed title could enlarge the grant or substantially change its character. The opinion of the court was given in the form of a sentence, and carried into execution, but the same result would have followed if there had been no departure from the literal import of the order. To cavil at such petty inaccuracies, where substantial justice has been done, is, I repeat it, unbecoming the dignity of the House of Representatives. That these perfidious miscreants met the fate which their conduct merited cannot be seriously doubted by any one. On the principle of reprisals, it was lawful to execute them ; and, as criminals of the highest grade, whose guilty hands involved a whole country in scenes of massacre and robbery, they fell just victims to the offended laws of nature and of nations. 'Those who, without authority from their sovereign, exercise violence against an *enemy* and fall into that enemy's hands, have no right to expect the treatment due to prisoners of war ; the enemy is justifiable in putting them to death as banditti.' Again, 'the violences committed by the subjects of one nation against those of another, without authority, are looked upon as robberies, and the perpetrators are excluded from the rights of lawful enemies ;' and also, 'whosoever offends

the state, injures its rights, *disturbs its tranquillity*, or does it a prejudice in any manner whatever, declares himself its enemy, and exposes himself to be justly punished for it.' Vattel, 162. Sir, can any gentleman compare these principles of national law with the evidence in the trials of Arbuthnot and Ambrister, and seriously contend that they have suffered unjustly and contrary to law? that they have been doomed to perish under the rod of military despotism? I frankly confess, it would require a stubborn determination to persevere in error, which I do not possess, to draw conclusions so inconsistent with such premises. Some gentlemen have attempted to make a distinction between the guilt of these men. Ambrister (say they) was taken in arms; he commanded the negroes and Indians, led them into battle, was identified with them, and therefore deserved death. Arbuthnot, we are told, was a mere merchant, a dealer in the articles which the Indians were *accustomed to purchase.*

"I have, in the preceding part of my remarks, had occasion to advert to the objects for which this man entered Florida, and the part which he took in exciting the Indians to war. If Nichols was an innocent dealer in 'the articles which the Indians were accustomed to purchase,' so was Arbuthnot: their views were the same; they held the same language to the savages, and each gave a pledge of British aid, in case war should be waged for the recovery of the lands ceded by the treaty of Fort Jackson. He frequently assured the chiefs that he had authority to correspond with his Majesty's minister at Washington —with Governor Cameron, of New Providence, and the Governor-General of Havana, on the subject of the necessary supplies for carrying on the war; and that he was in possession of a letter from Earl Bathurst, which informed him that Mr. Bagot was instructed on that subject. On the back of a letter addressed by him to that minister he states the aggregate force embodied among the Indians, and the positions at which they were posted, and requests a supply of arms and ammunition, specified in the following memorandum:

"'A quantity of gunpowder, lead, muskets, and flints, sufficient to arm 1000 or 2000 men. Muskets, 1000; more smaller pieces, if possible; 10,000 flints, a proportion for rifle, put up

separate ; 50 casks gunpowder, a proportion for rifle ; 2000 knives, 6 to 9 inch blade, good quality ; 1000 tomahawks ; 100 lbs. vermilion ; 2000 lbs. lead, independent of ball for musket.'

" This paper speaks for itself ; it cannot be misunderstood, and shows most clearly the participation of Arbuthnot in providing the means necessary to the prosecution of the Seminole War. He was the prime minister of the hostile Indians ; had a full power of attorney to make talks, and act for them in all cases whatsoever ; and if Ambrister, who was but a subordinate agent, was justly sentenced to suffer death, what excuse can be offered for the man who put the whole machinery of war, massacre, and robbery in motion ? Can it be said that he had not disturbed the tranquillity of the United States, or done us a prejudice in any manner whatever ? I presume it cannot ; and of course, according to the maxims of public law to which I have referred, ' he had declared himself our enemy, and exposed himself to be justly punished.' It is unnecessary for me to enlarge the discussion on the right of the commanding general to retaliate on the enemy for the acts of cruelty and barbarity which were practised in the progress of this war. Honorable gentlemen who controvert the right have shown no instance in which it was denied, either in Europe or America ; and, in support of it, we have the examples of Washington and many other general officers who fought in the War of the Revolution. Yes, sir, General Jackson had the right to inflict punishment on these outlaws. I rejoice that he exercised that right ; and if we do not paralyze and destroy the good effects of the act, it will contribute in no small degree to the future peace and security of our frontier. But the honorable Speaker has said that we have no right to practise retaliation on the Indians ; that we have forborne to do so from the earliest settlement of the country, and that it has become the common law of the land, which we are bound not to violate. Sir, from what source does the gentleman derive the principle that a right inherent in the nature of man—which he inhales with his first breath ; which ' grows with his growth and strengthens with his strength ' ; which has the fiat of God for its sanction, and is incorporated in the code of all the nations of the earth—becomes

extinct with regard to those who may forbear to exercise it, from motives of policy or humanity, for any number of years? That a common law is thereby entailed on the American people, to the latest generations, by which they are required to bend beneath the tomahawk and scalping-knife of the savage, and submit to every cruelty and enormity, without the privilege of retaliating on the enemy the wrongs and injuries we have suffered by his wanton transgression of the rules of civilized warfare? We have, it is true, tolerated much of the inhuman conduct of the aborigines toward our frontier inhabitants. We have endeavored to teach them, by examples of humanity and magnanimity, the blessings and advantages of civilization; but instances are not wanting of the most severe retaliation on these monsters, for their deeds of barbarity. If, however, there was not a solitary case on record, of the exercise of the right, it remains inviolate and inviolable. No community has the power to relinquish it, and bind posterity in the chains of slavish non-resistance. The gentleman's common law will not do for the freemen of the United States; it is *unique* and absurd. Sir, if the committee will pardon the digression, this novel idea of common law reminds me of an occurrence which is said to have happened in the early period of the settlement of the present polite and flourishing State of Kentucky. A man in personal combat deprived his antagonist of the sight of an eye, by a practice familiar at that day, called *gouging*. The offender was prosecuted and indicted for the outrage; he employed counsel to defend him, to whom he confessed the fact. 'Well, sir,' said the lawyer, 'what shall I say in your defence?' 'Why, sir,' said he, '*tell them it is the custom of the country!*' And I presume, if the honorable Speaker had presided on the trial, he would have said, 'Gentlemen of the jury, it is the common law of Kentucky, and you will find a verdict for the defendant.' But, sir, to be serious, let me bring the case home to the honorable Speaker himself. Suppose a band of these barbarians, stimulated and excited by some British incendiary, should, at the hour of midnight, when all nature is wrapt in darkness and repose, sound the infernal yell, and enter the dwelling of that honorable gentleman, and in his presence pierce to the heart the

wife of his bosom, and the beloved and tender infant in her arms—objects so dear to a husband and a father—would he calmly fold his arms and say, 'Well, 'tis hard; but it is the common law of the country, and I must submit'? No, sir; his manly spirit would burn with indignant rage, and never slumber till the hand of retributive justice had avenged his wrongs.

> "'Mercy to him who shows it, is the rule,
> And righteous limitation of the act,
> By which Heaven moves in pardoning guilty man;
> And he that shows none, being ripe in years,
> And conscious of the outrage he commits,
> Shall seek it, and not find it, in his turn.'

"I have no compassion for such monsters as Arbuthnot and Ambrister; their own country is ashamed to complain of their fate; the British minister here has disavowed their conduct and abandoned their cause; and we, sir, are the residuary legatees of all the grief and sorrow felt on the face of the globe for these two fallen murderers and robbers! For I call him a murderer who incites to murder.

"Mr. Chairman, I am not the eulogist of any man; I shall not attempt the panegyric of General Jackson; but if a grateful country might be allowed to speak of his merits,

"*Louisiana* would say: 'You have defended our capital against the veteran troops of the enemy, by whom it would have been sacked, and our dwellings enveloped in flames over the heads of our beloved families.'

"*Georgia:* 'You have given peace to our defenceless frontier, and chastised our ferocious savage foe, and the perfidious incendiaries and felons by whom they were excited and counselled to the perpetration of their cruel deeds. You have opened an additional territory to our rich and growing population, which they may now enjoy in peace and tranquillity.'

"*Alabama and Mississippi:* 'You have protected us in the time of our infancy, and in the moment of great national peril, against the inexorable Red Sticks and their allies; you have compelled them to relinquish the possession of our lands, and erelong we shall strengthen into full manhood, under the smiles of a beneficent Providence.'

"*The whole Western Country:* 'You have preserved the great emporium of our vast commerce from the grasp of a powerful enemy; you have maintained for our use the free navigation of the Mississippi at the hazard of your life, health, and fortune.'

"*The Nation at large:* 'You have given glory and renown to the arms of your country, throughout the civilized world, and have taught the tyrants of the earth the salutary lesson that, in the defence of their soil and independence, freemen are *invincible.*'

"History will transmit these truths to generations yet unborn; and should the propositions on your table be adopted, we, the representatives of the people, subjoin: 'Yes, most noble and valorous captain, you have achieved all this for your country; we bow down under the weight of the obligations which we owe you, and as some small testimonial of your claim to the confidence and consideration of your fellow-citizens, we, in their name, present you the following resolutions:

"'*Resolved*, That you, Major-General Andrew Jackson, have violated the Constitution which you have sworn to support, and disobeyed the orders of your superior, the commander-in-chief of the army and of the navy of the United States.

"'*Resolved*, That you, Major-General Andrew Jackson, have violated the laws of your country, and the sacred principles of humanity, and thereby prostrated the national character, in the trial and execution of Alexander Arbuthnot and Robert C. Ambrister, for the trifling and unimportant crime of exciting the savages to murder the defenceless citizens of the United States.

"'Accept, we pray you, sir, of these resolves; go down to your grave in sorrow, and congratulate yourself that you have not served this great Republic in vain.'

"Greece had her Miltiades, Rome her Belisarius, Carthage her Hannibal, and 'may we, Mr. Chairman, profit by the example!' Sir, if honorable gentlemen are so extremely solicitous to record their opinions of this distinguished gentleman, let us erect a tablet in the centre of our Capitol Square; let his bust designate the purpose; thither let each man repair, and engrave



the feelings of his heart. And, sir, whatever may be the opinions of others, for one, I should not hesitate to say, in the language of the Sage of Monticello, '*Honor and gratitude to him who has filled the measure of his country's honor.*'"

## JOSEPH EMORY DAVIS.

The subject of this sketch was born near Augusta, Georgia, on the 10th of December, 1784. He was the oldest one of a family of ten children, of which his brother Jefferson Davis was the youngest. His father, Samuel Davis, was a soldier of the American Revolution, and served in the mounted troops of Georgia, his native State, from his seventeenth year to the close of the War for Independence.

When Joseph was about twelve years of age his father emigrated to Kentucky, and settled in that portion of Christian County which was afterward erected into the county of Todd. Having received such education as the common schools of the country afforded, he was placed at an early age in a mercantile house, where he acquired those characteristic habits of business and knowledge of accounts which, no doubt, contributed largely to his future success. But he had but little taste for the life of a tradesman, and after having served a few years as a merchant's clerk he began the study of law in the office of Judge Wallace, of Russellville, Kentucky. Here he found a field commensurate with his ambition, and suitable to the development of his genius.

In 1811 he removed with his father's family to Wilkinson County, Mississippi, and continued to read law, under Joseph Johnson, Esq. In 1812 he was admitted to the bar, and commenced practice at Pinckneyville in that county. He remained there, however, but a short time before he removed to Greenville, in Jefferson County, where he remained until 1820, and rose to a high rank in his profession.

In 1817 the people of that county chose him as a delegate to the convention for the organization of the State Government; and his services in framing the fundamental law of the State

were marked by a depth of legal learning, of sound judgment, and practicality, which placed him in the ranks of its most eminent and useful men.

In 1820 he removed to Natchez, at that time the most important commercial town in Mississippi, and formed a copartnership for the practice of his profession with Thomas B. Reed, who was then the acknowledged leader of the bar of the State. It was the usage of the lawyers of that period to travel the circuit with the judge, it being one of the customs of England which still lingered in this country; and as those of the highest rank were thus brought in constant contact, it required the highest intellectual qualities to achieve success; consequently the bar of Mississippi at that time was not inferior, perhaps, to any that ever existed in the State; and it was under these exacting circumstances, and in the midst of this array of talent, that Mr. Davis attained his eminence.

As a lawyer Mr. Davis was thoroughly versed in the learning of his profession. He possessed an intellectual vigor, an inquisitiveness of mind, and a practicality of disposition which led him to look beyond the mere existence of the statute to an inquiry into the origin and reason of the law. The poetry and sentimentality of his nature had been pruned and subdued by the mathematical teaching and stoical example of his father, and he viewed things in the light of reason and stern reality. His opinions were the result of deep reflection, and his views were always judicious and prospective. His perception was acute, and he was quick to detect points of weakness, and slender probabilities. As Lord Cockburn said of Lord Jeffrey, "He was a first-rate legal pilot. He saw at the outset of the voyage all the rocks and shoals on which the ship was likely to strike, and all the gales that might favor or obstruct it; all the anchors that would hold, and all the harbors of refuge into which he might run. He scented what would turn out nonsense or falsehood a great way off, and thus was one of the safest of all general advisers. It was not exactly acuteness or talent; it was a faculty which these qualities often obstruct; it was the power of taking large and calm surveys, with a view to detect strong or weak points."

To these superb qualities of judgment and perception, in which lay the secret of his facility in the formation of correct opinions, and in a wise regulation of conduct, Mr. Davis added a correct association of ideas and a memory for details which enabled him to array facts and circumstances in the most exact and imposing order, and a logical power that presented them in the most forcible manner to the minds of his hearers. And to his powers of analysis and synthesis were superadded superior oratorical accomplishments. He had a deep, clear, and musical voice, a brilliant imagination, a refined taste, forcible expression, a graceful manner, and engaging personal appearance. Hence he was a pleasing and entertaining speaker and a powerful advocate.

In 1827 he decided to retire from the bar and begin the life of a planter, and steadily closed his engagements. His professional success had been great and his practice remunerative, and he now sought that repose which can only be found in the bosom of rural domesticity. But he carried with him into his new occupation the same energy and capacity which characterized his career as a lawyer, and the result was that, in 1861, he possessed one of the most valuable plantations on the Mississippi River. His numerous slaves, flocks and herds, beautiful grounds, extensive orchards, commodious dwelling, and large-hearted hospitality, caused his home to become a bright landmark in the memory of the happy days of a prosperous country.

Among the prominent features of his character were his great benevolence and humanity. Many youths of both sexes were indebted to him for a liberal education, and some who were his friends in the days of his comparative poverty found in their necessities a refuge under his roof; and so considerate was his kindness, so sincere his generosity, and so hospitable his manners, that no one to whose wants he administered ever felt the sting of dependency, or suffered humiliation in the reception of his benefits.

He was exceedingly kind and just in the management of his slaves. It was a fixed rule upon his plantation that punishment should only be inflicted for crime of which the accused had been

convicted by a jury, selected from the other negroes on the plantation; and over these trials he alone presided as judge; and he gave it as his experience that the tendency of his plantation juries, like those of other courts, was to find a verdict not from the evidence adduced, but from their opinion of the character of the accused, a disposition which it became necessary for him to check by the most careful charges and an un-judgelike defence of the criminal. His tender care for them ceased not with his life, but was continued by an unusual testamentary provision for those who were incapable of supporting themselves.

With a cheerful temper, attractive manners, and a heart so full of kindness, he possessed every element for popularity, and might have achieved high political distinction had he chosen the field of politics for the exercise of his great talents; but he seems to have had no desire for the honors, emoluments, or excitements, of public life. He held no office but that of a delegate to the Convention of 1817, and sought but one other—that of delegate to the Convention of 1832. At this convention the important question of an elective judiciary was to be decided, and he entered the canvass in opposition to that measure, which he feared would drag the ermine through the mire of party strife, and prove fatal to the purity and efficiency of the bench. But, controlled by an intelligent suffrage, the election of judicial officers in Mississippi produced no such effect, but, on the contrary, proved, so far at least as the Supreme Court was concerned, an improvement upon the former system; and it is a notable fact that the judges of the High Court were generally chosen from the political party then in the minority in the districts from which they were elected.

In politics Mr. Davis was a disciple of Jefferson. With that creed he began his career, and from that faith he never swerved. Far-seeing and conservative in his character, he doubted the expediency of secession when it occurred, but never questioned the right of a State to judge, in the last resort, of its wrongs, and the mode and measure of their redress.

During the war he was driven from his home and property on the banks of the Mississippi, and, without complaint or an expression of regret, procured a more humble residence in Hinds

County ; but there, too, he was soon invaded, and there this feeble octogenarian, with none to sustain him but an invalid wife, two helpless girls, and his faithful slaves, was made to feel the effects of that vengeful rapine which knew no age nor sex. When the purpose to burn down his house was announced, he told the commanding officer that his wife was unable to walk, and that she was in that house ; to which the brutal reply was, that the house would be fired in so many minutes. Amidst this heart-rending scene his faithful slaves came to his rescue, and tenderly and affectionately lifted the bed upon which Mrs. Davis lay, and bore it far enough away from the house to be free from the danger of falling fire, where she remained until the enemy retired, after having plundered the premises.

After many vicissitudes and hardships Mr. Davis returned, at the close of the war, to Vicksburg. The enemy still had possession of his plantation, from which his only revenue was derived, and by falsehood, artifice, and bullying, endeavored to exclude him, and deter him from asserting his claim to it. He preferred charges of falsehood and theft against the senior officer of the Freedmen's Bureau at Vicksburg, who had proposed to surrender his property for a pecuniary consideration, which, though small compared to its income, was to him an obstacle mountain-high in the principle it involved. In keeping with the courage, integrity, and self-denial, which had always characterized him, Mr. Davis rejected the proposition with indignation and scorn, and, old and feeble as he was, defied them when they attempted to intimidate him by threats. He finally obtained possession of his property, but continued to reside in Vicksburg, in the midst of a large circle of relatives and personal friends. Here, like the Grecian sage, he had seen two generations pass away whose polity was enlightened by his genius and whose welfare was promoted by his counsel, and now the third caught the inspiration of his example. The last remnant of a past and prosperous age, he lingered far behind the contemporaries of his meridian manhood, and disappeared amid the darkness that had gathered over his country. He died in Vicksburg on the 18th of September, 1870, in the eighty-sixth year of his

age. His remains were borne down the river for burial, and when they reached the landing of the Hurricane, his former home, they were met by a large concourse of his former slaves, who, with loud lamentations, and bearing torches that sent a dismal glare through the darkness, seized the bier and bore it to the grave, where he was laid away by the side of his wife. He had watched with long and jealous care the growth and happy working of that system of jurisprudence which his services were so conspicuous in planting in Mississippi; and his death deprived its people of the last of those who, when the State was a Territory, strove to develop its resources, to elevate its institutions of learning, and to give dignity and purity to its Bench and its Bar.

# CHAPTER III.

## ORGANIZATION OF THE STATE GOVERNMENT—ITS JUDICIAL ESTABLISHMENT — THE BENCH — EMINENT JURISTS—1817–1832.

JOHN P. HAMPTON—EDWARD TURNER—POWHATAN ELLIS—JOSHUA G. CLARK—JOHN TAYLOR—JOHN BLACK—RICHARD STOCKTON—JOSHUA CHILD—GEORGE WINCHESTER—HARRY CAGE—ISAAC R. NICHOLSON—ALEXANDER MONTGOMERY.

In pursuance of an Act of Congress passed on the 1st day of March, 1817, a convention of delegates from the several counties of the western portion of the Mississippi Territory was convened, in the town of Washington, on the 7th day of July in the same year, for the purpose of organizing a State Government. Of this convention David Holmes was chosen president, and a committee of one member from each county was appointed to prepare a constitution and form of government for the new State. On the 24th of July, the committee reported the result of its labors, and on the 15th day of August, after various amendments to the report, the convention adopted the first Constitution of Mississippi.

This Constitution contained the following provisions, now unknown to our laws: 1st, It required a property qualification for holding office. 2d, It restricted the right of suffrage to those who paid a State or county tax. 3d, It declared that ministers of the gospel, being dedicated to God and the care of souls, ought not to be diverted from the great duties of their functions, and that, therefore, no minister of the gospel, or priest of any denomination whatever, should be eligible to the office of governor, lieutenant-governor, or to a seat in either branch of the General Assembly. 4th, It permitted the estab-

lishment of State banks, and assigned no limit to the pledging of public credit or to the contracting of public obligations, except in regard to the appropriations for the army, which were limited to one year. The judicial power of the State was vested in one supreme court of appellate jurisdiction, which was to be held by the district judges, and a superior court, to be held by one of these judges in each county; but the judge of the superior court might not sit on the trial in the supreme court when his judgment in the court below was under revision; but it was made his duty to report in writing to the supreme court the reasons upon which his decision was based.

In 1821 the Legislature established a separate chancery jurisprudence in the State. This act divided the State into two chancery districts, and provided for the appointment of a chancellor, to serve during good behavior. It also prescribed the rules of practice in this court, and defined its functions.

In 1825 a special term of this court was provided for the city of Natchez, and Monroe County was erected into a separate chancery district. In 1827 this act was repealed; the system of chancery was revised, and four chancery districts were formed.

The Judiciary Act of 1818 created a county court, consisting of a chief and two associate justices, with the jurisdiction and cognizance of justices of the quorum; and the Act of 1821 gave to one judge the powers of probate and the registry of deeds. In 1822 a county court was created, composed of a judge of probate and two associates, with limited original cognizance, but with appellate jurisdiction over the acts and decrees of the probate judge acting alone as the ordinary.

By the Act of 1822 justices of the peace were made conservators within their several counties, and were empowered to take all manner of recognizances for good behavior, or for appearance at the circuit court. They were authorized to issue warrants for the apprehension of criminals, to take recognizances to answer, or to commit the offender, and might issue search-warrants. They were required to take in writing the voluntary confessions of the accused and the testimony of witnesses, and certify the same to the circuit court. They might issue war-

rants of arrest in cases of removal or escape, and subpœnas for witnesses, in State cases, to any other county, but they were to be indorsed by a justice of the county to which they were issued. They might also fine and imprison for contempt.

Appeals from the justices' courts were required to be tried *de novo* and summarily in the circuit court, and a trial by jury was granted in all cases which involved more than twenty dollars.

This system of judicature remained unaltered until the judiciary was remodelled under the Constitution of 1832. Let us now notice the eminent judicial functionaries of that period.

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## JOHN P. HAMPTON.

Judge Hampton, it is believed, was a native of South Carolina, and belonged to the family from which sprang the present eminent United States Senator from that State. He emigrated to the Mississippi Territory some time prior to the organization of the State Government, and was the first Chief Justice of the State of Mississippi, having taken his seat at the opening of the court, in the spring of 1818.

That he was a profound lawyer and able judge there can be no question. This is evident both from the fact of his elevation and the tenor of his decisions which are always marked with clearness, comprehension, and a lofty and unswerving regard for equity and justice. One of the ablest decisions rendered by our early courts was delivered by Chief Justice Hampton in the case of Stark's heirs *vs.* Mather (Walker's R. 180). This was a case of conflicting tenures arising under different grants, one of which was made by Spain and the other by the Government of the United States.

The court held that if the prior Spanish grant was a nullity *in se* for want of power on the part of the Spanish Government to effectuate it, yet, being embraced in the confirmatory provisions of the Georgia Cession, it was valid, and that consequently the subsequent patentee claiming under the United States was merely a trustee of the former grant.

This decision was ably assailed by the distinguished Mr.

Walker, in a note appended to his Reports, and the High Court of Errors and Appeals has since decided, in the case of Montgomery *et al. vs.* Ives *et al.* (13 S. & M.), that the confirmatory articles of the Georgia Cession did not relate to the dates of patents so as to give preference to the older; that each patent took effect from the date of the cession, and they were therefore of equal dignity as regarded age, and that the confirmation of a void patent does not, by relation to its date, affect the rights of third persons.

But if the quieting clauses in the Articles of Cession had the effect of legalizing or ennobling the Spanish grant, and the quieting effect extended to actual possession under a *bona fide* title, the plaintiff being in such possession at the time of the treaty, it is difficult to perceive what other effect the application of equity to the case would have than that embraced in the opinion of the court, notwithstanding the technical remissness of the plaintiff, upon which Mr. Walker, in part, bases his attack.

Judge Hampton was prompt to animadvert upon every instance of moral turpitude that fell under his revision. In the case of Dismukes *vs.* Terry (Walker, 119), in which the gist of the defence was fraud, he said: "It is a subject of regret to the moralist that those of us who are called to the frequent investigation of controversies originating in the commerce of man with his fellow-men, and to peruse the history of judicial proceedings as reported for centuries, have often to encounter instances of discrepancy in testimony so great that, after the most charitable allowance for misconception, imperfection of memory, and involuntary prepossession, the mind perceives sufficient reason still to believe that there has been, on one side or the other, if not on both, a voluntary aberration from conscious truth. But should the present case present any grounds for animadversion in this respect, so far as the defendant may be implicated, as to all, except what duty demands, I desire to stand reproved by a recollection of his fate, and 'to tread lightly on the ashes of the dead.'"

So great was his reprobation of everything that savored of unfairness that, in the decision of the case of Frazer *vs.* Davis

(Walker, 72), which, from the style, was evidently rendered by him, the court declared that if a person, in possession of a mere rumor that an article had risen in value, purchased it, without communicating the report to the vendor, the sale was fraudulent and void, as well in law as in equity. "It makes no difference," said the court, "with what formality an obligation is entered into, if obtained by fraud, by a suggestion of falsehood, or suppression of the truth, it is void, and the party is not bound to perform." The enforcement of this principle to the extent inculcated in this case would certainly make a great revolution in the present prevalent system of traffic; and it is a standard which practical morality has perhaps never yet attained in any community, and, it is feared, never will, until the passions and frailties of men are subjected to more powerful moral influences than any human rule of conduct has yet been able to devise or enforce.

"It would certainly be well," says Mr. Walker, in commenting upon this case, "for the best interest of society, if the pure principles of morality inculcated in this case could be established as the law of the land, and practically enforced in the ordinary transactions of life; but such a rule has been considered by many eminent tribunals as replete with difficulties." If a person should be required to furnish others with the benefits of his superior judgment, and the fruits of his alacrity, tact, and industry, on penalty of invalidating his contracts, it would operate in our present state of society as a great clog to industry and enterprise; but the effort to establish such an order of things, however futile in practice, was none the less creditable to the character of this eminent and justice-loving judge; and his decision will, it is to be hoped, remain a beacon which, if it cannot be fully reached, will yet throw a vivifying light upon the moral features of our laws, and attract all future decisions of our courts, as far as practicable, in that direction.

Judge Hampton continued as Chief Justice upon the supreme bench until the year 1829, when he was succeeded by the Hon. Edward Turner.

## EDWARD TURNER.

Judge Turner was a native of Virginia, and was born in the county of Fairfax on the 25th of November, 1778. When but eight years old he moved with his father's family to Kentucky, where, after attending for several years the common schools of the country, he was sent to the Transylvania University, which he attended at intervals, as his time and means would permit. At this institution he obtained a knowledge of the higher branches of an English course, but did not study the ancient languages, of which he was, throughout his life, totally ignorant. The assiduous and persevering character of young Turner soon attracted notice, and he was adopted into the family of the chief law professor of the university, and assigned to duty as a clerk in his office, in which position he began the study of law, and which, notwithstanding the death of his patron, which occurred soon after, he continued to prosecute with the most devoted application and untiring energy, until the year 1802, at which time he emigrated to the Mississippi Territory, and at once began the practice of law in the city of Natchez, where his genial disposition and cordial manners gained for him a kind reception and professional encouragement.

The Governor of the Territory became so much impressed with the worth of the young lawyer that he made him his aide-de-camp, and with this office he began those distinguished public services which rendered him so conspicuous in the annals both of the Territory and the State. He held this position but a short time before he was made clerk of the Territorial House of Representatives, but continued to act also as the Governor's private secretary. In the latter part of the year 1802, he married a Miss West, of Jefferson County, where he made his residence and became clerk of the county court, but continued his practice in other courts.

In 1803 Mr. Turner received the Federal appointment of register of the land office and commissioner of lands for the Territory. This office he held until 1805, when, on being superseded, he removed to the town of Greenville, in Jefferson

County. Here he continued his practice of law until 1810, and then removed to Warren County, which he was elected, in the year 1811, to represent in the Legislature. About this time he lost his wife, but married again the next year. In 1813 he returned to Natchez and resumed the practice of law in that city, where he became also city magistrate and president of the board of selectmen.

In 1815 he was elected to represent the county of Adams in the Legislature, and was re-elected for several terms. In 1815 he was also appointed by the Legislature to prepare a digest of the statute laws of the Territory, which was completed and adopted in 1816. This digest contained all the statutes in force at that period, and was entitled "Statutes of the Mississippi Territory." This compilation was made in a masterly manner, and evinced on the part of the compiler a thorough knowledge of the Territorial laws, as well as judgment and skill in its arrangement.

Judge Turner was a member of the Convention of 1817, which framed the State Government, representing Adams County in that body, and in which he took an active and leading part. In 1818 he was elected to the first Legislature assembled under the State Government, and, with the exception of one year, continued a member of the House of Representatives until 1822, during which time he was twice elected Speaker.

In 1820 he was appointed Attorney-General of the State by Governor Poindexter. This office he held but a short time, when he was superseded by legislative appointment.

In 1822 he was appointed judge of the criminal court of Adams County, and in 1824 was, without solicitation, made a judge of the Supreme Court of Mississippi.

In 1829 he became Chief Justice of the State, which position he held until superseded by the intervention of the amended Constitution of 1832.

In 1834 he was elected Chancellor of the State, which office he held until 1839, during which he greatly improved the chancery jurisprudence of the State. In 1840 he was again elected a judge of the Supreme Court to fill the vacancy occasioned by the death of Mr. Justice Pray, and at the expiration of the

term, in 1843, he was chosen, at the age of sixty-five, to the State Senate, to represent the district composed of the counties of Jefferson and Franklin.

Through all this wide and varied theatre of public services and multiplicity of public duties, Judge Turner acted his part ably and faithfully. His superb patriotism was a constant incentive to all his energies; and he possessed in a high degree those traits of character which engage confidence and respect. His industry was indefatigable, and so versatile was his capacity for usefulness that no sphere of public duty seemed foreign to its adaptation and perfect adjustment. He was a man of great integrity and purity of character, and his judicial career was marked with an uprightness, impartiality, and love of justice that invited a comparison to that of Sir Matthew Hale. Judge Turner was not a man of extraordinary natural endowments, nor were his general acquirements extensive. He was not considered a profound lawyer. His life was too checkered and varied by the abstractions of public services for the requirements of that jealous science. Yet his energy, integrity, and sound views of justice and equity, made him an excellent judge. While he possessed no one dazzling feature of character, he presented that full round orb of virtue and usefulness, which is rendered refulgent by its uniqueness and uniformity. He was a man of exemplary rectitude in all the relations of life: a kind husband, affectionate father, a warm friend, and a great favorite with the members of the bar. He was of a portly and commanding figure, and the qualities of his heart were vividly reflected in the kind and genial features of his countenance and in his affable manners. I will close this sketch of Judge Turner by introducing the following extract from the minutes of the Supreme Court. At the expiration of his second term as judge of the High Court, in 1843, he declined re-election, whereupon the members of the bar then in attendance upon the court held a meeting in Jackson, and, upon motion of Hon. William Yerger, resolved:

"That the State of Mississippi is under many obligations to the Honorable Edward Turner for the many years of arduous labor he has devoted to her service, and for the distinguished

example of purity, integrity, and patriotism which he has afforded to her citizens.

"That the members of this bar entertain the kindest feelings of attachment for the honorable, for the upright, the pure and impartial manner with which he has discharged the duties of his station as a judge of this court.

"That a copy of these resolutions be forwarded to Judge Turner, and that the same be published in the papers of this city, and of the cities of Natchez, Vicksburg, and Holly Springs, and that leave be asked to spread them upon the minutes of the High Court of Errors and Appeals."

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## POWHATAN ELLIS.

Judge Ellis was a native of Virginia, and emigrated to Mississippi during its Territorial era. I have been able to ascertain nothing in regard to his early life or his antecedents prior to his appearance in Mississippi. He was a lawyer of repute in the Territory, and in 1818 was elevated to the supreme bench of the State, being one of the first judges of that court. This seat he held until the year 1825, when he was appointed by the Governor to fill the seat in the United States Senate which had been vacated by the death of Hon. David Holmes, and at the expiration of the term in 1827 he was returned to the Senate by election, which office he held until 1832. He was then appointed judge of the Federal District Court, and afterward United States minister at the city of Mexico, whence he returned to Virginia, and died in the city of Richmond.

The eminence of Judge Ellis was not due to any distinguished ability. He was a man of ordinary talents and limited literary acquirements; but he possessed great energy of character, a patriotic spirit, and a cordiality of manners which insinuated him into popular favor. He had an air of bluster and boldness in his bearing calculated to impress the ignorant with an idea of his superiority, and a self-complacency that won the admiration of the learned.

But notwithstanding these peculiarities of his character,

Judge Ellis was a pure and upright judge, and a popular and useful member of society; true to his friends and devoted to his official duties. He delivered more opinions than any other judge during the time he was upon the bench, and while he entered into no profound disquisitions or elaborate discussion of subtleties and technicalities, his decisions are illuminated by his integrity, and his conclusions are just and correct.

He was never married, and was therefore somewhat unorthodox in his views of the relations of husband and wife; hence it may not be surprising to find him, in the case of Bradley *vs.* the State (Walker, 156), holding to the old feudal doctrine that a husband might chastise an obstreperous wife, provided he used a rod no larger than the thumb.

One of the most conspicuous acts of Judge Ellis, while in the Senate of the United States, was his vote with Mr. Benton, of Missouri, and Judge Smith, of South Carolina, against the ratification of the Treaty of 1828, establishing the boundary-line between the United States and Mexico, which intersected the Red and Arkansas rivers and brought a non-slaveholding power to the borders of Louisiana, and nearly to the boundary of Missouri; which utterly deprived the slaveholding interest of whatever advantages it obtained by the compromise measures of 1820, and left to it no expansion but the Territories of Florida and Arkansas.

Whether Judge Ellis and his two co-voters saw the full result of this treaty—the agitation that followed, and the Mexican War—or not, yet they are entitled to all the merit which a bold opposition to a most disastrous measure can bestow. But while the senatorial career of Judge Ellis was characterized by alertness and fidelity, it was during its latter part overshadowed by that of his brilliant colleague, George Poindexter.

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## JOHN TAYLOR.

The subject of this sketch was a native of the State of Pennsylvania. He emigrated to Mississippi in the early days of the Territory, and settled in the county of Adams, which in 1814

he represented in the Territorial Assembly. He was also a member, from that county, of the Convention of 1817, which organized the State of Mississippi.

In 1818 he was elevated to the supreme bench, from which he retired in 1822.

It is difficult, if not impossible, at this day to ascertain more than the general character of many of the distinguished gentlemen who emerged from the dimly historic bar of the Territory into prominent places in the jurisprudence of the State; and if Plutarch deemed it necessary to reside forty years in Rome to qualify himself for the task of writing the lives of some of its eminent citizens, surely the disparity of circumstances will avail as an excuse for the writer; but from what we know of the eminent lawyers who were early attracted to this rich and blooming country, to achieve a prominent place among them required talents and learning of a superior order.

There are but two reported decisions known to have been delivered by Judge Taylor from the supreme bench—those of Delahuff *vs.* Reed, and Stockett *vs.* Nicholson (Walker's R., 74 and 75), neither of which contains any features of special interest; but there is no question that he was a lawyer of ability, and enjoyed a high judicial character.

He seems to have possessed no political aspirations, and, although for several years a member of the Legislature, took no active or ardent interest in partyism or public affairs. He was thoroughly devoted to his profession, and, being a bachelor, his law books were the chief objects of his solace and companionship. He died in Natchez in 1823.

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## JOSHUA G. CLARKE.

Joshua G. Clarke was born and reared in the State of Pennsylvania, and received a competent education. He appeared in the Mississippi Territory at an early period in its history, and represented Claiborne County in the Territorial Legislature. He was also a member of the convention assembled in 1817 for the purpose of forming a State Government, and took an active

part in the proceedings of that body. In 1820 he was promoted to a seat upon the supreme bench of Mississippi, and in 1821, upon the establishment of a separate chancery system, he was appointed the first Chancellor of the State, and held that office until the year 1827.

Judge Clarke was a lawyer of ability, and a man of sterling qualities. He possessed in a high degree that placid temper and amiable patience which comport so compatibly with the requisite character of a good chancellor and just judge; and it is to be regretted that his decisions have not been preserved. His learning and integrity first directed our system of equity jurisprudence into those channels through which it has flowed with increasing volume and utility. His career upon the supreme bench, though short, gave eminence to his judicial character. His opinions are marked with learning, dignity, and force; and had he lived longer his usefulness would have, no doubt, increased with his years. He died at Port Gibson in 1828.

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## JOHN BLACK.

Judge Black was born and reared in the State of Massachusetts. He emigrated to Mississippi about the time of the organization of the State Government, and in 1826 was appointed one of the judges of the Supreme Court. This office he held until the year 1832. He was then appointed to succeed the Hon. Powhatan Ellis in the Senate of the United States, and in 1833 was elected under the new Constitution for a full term.

Judge Black was evidently a lawyer of much ability, and one of the ablest judges whose opinions are reported by Mr. Walker. It is from these mostly that I have been able to judge of his legal and judicial character. His decisions are lucid, terse, and logical, and evince a perfect familiarity with the settled principles of law. His course in the United States Senate was at first distinguished for a marked devotion to the interest of his State and section; but his subsequent opposition to some of the measures of Jackson's administration caused him to become unpopular with his constituency, and, on the 28th of January,

1835, the Mississippi House of Representatives, by a vote of 38 to 13, passed the following resolutions :

" *Whereas*, We regard it as a fundamental axiom in our system of government, that all power and political right is inherent in the people ; that the government, both State and Federal, was only instituted for their good ; and that in adopting our republican form of government the object was to select that which would best subserve their wants, wishes, and interests, with the least trouble and burden to themselves ; from which it necessarily results that those to whom power or authority is delegated or intrusted ought only to exercise or use it in accordance with the opinion of those for whom they hold it, whenever that opinion can be ascertained ;

" *And whereas*, The Hon John Black was elected by this Legislature a Senator to the Congress of the United States, under the avowed pledge and promise of sustaining the principles of the present administration, by which we understood he would, by his vote and by his influence, support our President, Andrew Jackson, in his efforts to preserve and protect the Government from the influence of a corrupt and powerful moneyed monopoly in the Bank of the United States, and a prodigal expenditure of the public treasure to objects of doubtful constitutional purposes, and a tariff of protection and monopolies—all equally tending to consolidation ;

" *And whereas*, The said Senator has upon various occasions violated the pledges which he had given to the people of this State, previous to his election, and more particularly in his votes on various occasions in the Senate of the United States in relation to the Bank of the United States, and especially that which he gave in voting for the resolution passed in that body on the 28th day of March last, in which the President is charged with having assumed to himself authority and power not conferred by the Constitution and laws, but in derogation of both ; and also because we believe that he has joined the party opposed to the present administration, and to the best interest of this State ; therefore,

" *Resolved*, That in the opinion of the House of Representatives of this Legislature, our Senator, the Hon. John Black, has

unfaithfully represented the people of this State ; and that it is an obligation which he owes to them to vacate his seat in the Senate of the United States, by resigning, and that he be invited to do so.

"*Resolved*, That our Senators in Congress be instructed to vote for rescinding from the journals of the Senate the resolution passed on the 28th day of March last, in which the President is charged with exercising powers not granted, in relation to the public deposits.

"*Resolved*, That a copy of these resolutions be transmitted to each of our Senators in Congress, to the President of the United States, and to the Governors of each of the States and Territories."

Notwithstanding this censure and request, it seems that Judge Black did not see proper to comply until two years after, when he resigned his senatorship and resumed his practice of law. Waiving the delicate question of instruction to Senators, and admitting the right of non-compliance when the requirements are contrary to conviction, it is difficult to account for this tenacity of Judge Black, under the circumstances. Yet such is the record of the matter.

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## RICHARD STOCKTON.

Judge Stockton was born and reared in the State of New Jersey, and received a finished education at Princeton, where he received the first honors. He belonged to the same family from which sprang the United States Senator of that name. Judge Stockton was an eminent lawyer and a man of ability. He was remarkably modest and unassuming in his manners. He became a judge of the Supreme Court of Mississippi in the year 1822, and resigned in 1825, when he was immediately chosen Attorney-General, and held that office two years. He delivered no opinion of the court while he sat upon the bench. His resignation took place under the following circumstances :

In 1824 the Legislature of Mississippi passed an act in the nature of a Stay-law, and entitled " An act for the further relief

of debtors." This act provided that if property, taken in execution, should not, when offered for sale, bring two-thirds of its previously appraised value in cash, the sheriff should proceed to sell the same on one year's credit.

In pursuance of the provisions of this act, the sheriff of Claiborne County had levied upon and caused property to be duly appraised, and failing to receive at the sale a cash offer amounting to two-thirds of the valuation, proceeded to sell the same on one year's time, taking bond and security, which he returned into court.

Upon this a motion was made before the Circuit Court, Judge Stockton presiding, to fine the sheriff for "undue return and false return." Judge Stockton declined to decide upon the legality of the return made by the sheriff, but referred the cause to the Supreme Court, which sustained the motion, and caused judgment and a fine of one hundred dollars to be entered against the sheriff for making "undue and false return."

Upon this the House of Representatives, at the next session, 1825, passed a resolution requiring the sergeant-at-arms to notify the judges of the Supreme Court to appear at the bar of the House and show cause why they should not be removed from office in consequence of their decision in regard to the "Debtor's Act."

In obedience to this summons, Judge Stockton appeared at the bar of the House, begged leave to exhibit, in writing, a plain and succinct statement of the case as decided by the Supreme Court, and submitted the question to the determination of the House, whether the judges, in rendering their opinion, had been governed by impure motives, or had decided according to established law.

The position taken by the Supreme Court in this case was: That as the original execution was issued, levied, and executed, and a forthcoming bond taken and forfeited previous to the enactment of the "Debtor's Law," the sheriff should have sold upon the forfeiture of the forthcoming bond, according to the provisions of the statute; that, by taking different security from the original security contained in the judgment, he violated the obligation of the contract, made a new one between

the parties, not known to them at the time of the original undertaking, at the time of the judgment, at the time of the serving of the execution, and at the time of the forfeiture of the forthcoming bond taken, under act of the Legislature, on the first execution; that, by giving an additional credit of twelve months after the first suit had been prosecuted to judgment, levy, and forfeiture of the forthcoming bond, and after execution had been issued according to law upon that forfeiture, and accepting as security the notes of persons different from the original contracting parties, he not only impaired the obligations of the contract, but entirely exonerated the original parties from any further liability.

In support of the decision of the Supreme Court in this case, Judge Stockton cited the following precedents, which he said were all that he could recall to memory, or gather from the limited libraries at that time in Jackson:

"No State shall pass any law impairing the obligations of contracts." Constitution United States, Art. I., Sec. 10.

"The State shall pass no *ex post facto* law, or law impairing the obligations of a contract." Constitution of Mississippi.

"Any law which releases a part of the obligation of a contract must literally impair it." 4 Wheaton, 197.

"One of the objects of the Constitution was to remedy evils which had grown up in the several States, among which was that of extending by law the time of payments stipulated in the law." *Ibid.*, 204.

"The convention meant to declare contracts inviolable." *Ibid.*

"The objection to a law, on the ground of its impairing the obligation of a contract, can never depend on the change which the law effects in it. Any deviation in its terms, any postponement or acceleration of the period of performance, which it prescribes, imposing conditions not expressed in the contract, or dispensing with those that are, however minute or apparently immaterial in their effect upon the contract of the parties, impair its obligation." Green *vs.* Biddle, 4 Wheaton, U. S. Reports.

The law of North Carolina, passed during the war of 1812,

giving a stay of one term, declared unconstitutional. 4 Wheaton, 186 ; 5 Hall's Amer. Law. Jour.

A law of a similar nature enacted by the Legislature of Kentucky pronounced unconstitutional. Blair *vs.* Williams ; Lapsley *vs.* Brazier, Ky. Reports.

The committee propounded to Judge Stockton the following questions :

" Was it the opinion of the Supreme Court that any officer, executive or ministerial, can be punished for executing a law before the same had been declared unconstitutional by the court ?

" Was it the opinion of the Supreme Court that the court had a right to make such a declaration of the unconstitutionality of a law as to suspend its operation ; and would the court have justified any ministerial officer for refusing to execute the same law after such declaration ?

" Was it the opinion of the Supreme Court that the whole of the seventh section of an act entitled ' An act further to extend relief to debtors ' was unconstitutional ; or if only a part of the section, what part ?

" Was it the opinion of the Supreme Court that the seventh section was unconstitutional as to all contracts, or to such only as had been entered into previous to the passage of the law ?

" Was it the opinion of the Supreme Court that the court had power and right to declare an act of the Legislature unconstitutional ; if so, from whence does the court derive its power : was it expressly delegated or implied, or was it from common usage ?"

These questions were submitted to Judge Stockton in writing, and to which he made the following written reply, addressed to the chairman of the committee :

" After requesting you to accept for yourself, and expressing for me to the other gentlemen of the committee, my sincere thanks for the very handsome and delicate manner with which they have treated me throughout the whole of this investigation, to their inquiries I respectfully answer :

" As to the first of the inquiries,

" The question before the Supreme Court was, whether the

sheriff should be fined one hundred dollars, according to the statutes, for failing to make a due return upon the execution, and for having made a false return thereon. The motion to fine the sheriff was in strict conformity to the statutes, and the committee have, already, the opinion of the court in writing.

"Upon the second inquiry: The question was not made before the Supreme Court.

"Upon the third and fourth inquiries: The opinion of the Supreme Court, which is in possession of the committee, was that it was unconstitutional as to all contracts made previous to the passage of the law. That the court was not called upon to give any abstract opinion upon any question not immediately before them; but if the committee were desirous of ascertaining what his private opinion was, that while he was the junior member of the bench, he would give it with great cheerfulness, and assure them that the other members of the bench joined him in opinion; although, from the case before them not requiring it, no official promulgation was made."

But the character of the case was certainly very much changed by these proceedings; and it is strange that Mr. Walker did not report it for its importance, not only in consequence of the difficulty it produced between the Legislature and the Supreme Court, but also on account of the principles which it involves.

It seems, however, that the committee were dissatisfied with both the reason and the result, and reported that, on a review of the case and the proceedings of the Supreme Court, they believed that the opinion of the court, as to the constitutionality of the law, was erroneous; and that, in regard to the fine imposed upon the sheriff, they did not hesitate to say it was unjust and illegal; that they could not believe that any subordinate officer ought to be punished for executing any process which emanated from competent authority; that *it was his duty to execute it, and not to judge of its legality;* that they knew of no power, either delegated or implied from the Constitution, that authorized the Supreme Court to make such a declaration of the unconstitutionality of any law as to suspend its operations; but that they were constrained to believe that

such power was assumed and maintained on the grounds of *judiciary* precedent alone.

That they held it to be of the greatest importance that the several departments of government should be separate and distinct; and that they should, at the same time, harmoniously co-operate in the great object of true governmental policy—*the common good*—and they expressed the hope that all into whose hands were committed such important trusts would execute them with caution, so as to avoid collisions, unless impelled by the most serious necessity.

That they could not, for a moment, entertain an idea that the Supreme Court were influenced in their decisions by any impure motive, and invoked the Legislature to determine the question with such firmness as should forever secure the rights and interests of the community, and, at the same time, with that justice, liberality, and respect which is due to those to whom was committed the administration of the laws.

And that, as it was manifestly unreasonable and unjust that subordinate officers should be subjected to penalties for executing a law enacted by competent authority, it was therefore recommended to the House to instruct the Judiciary Committee to prepare and report to the House a bill providing against that evil.

This report was received and laid on the table, and on the same day Judge Stockton tendered his resignation, as a judge of the Supreme Court, to the Speaker of the House. He afterwards removed to New Orleans, and was killed in a duel there in the prime of his life.

This deplorable end will present itself to the reader more than once in tracing the biographies of eminent gentlemen of the Mississippi bar, and it is to be regretted that the custom of duelling has hitherto, especially in the South, bidden defiance to the restraints of every law enacted for its prevention. Indeed, the only efficacy of duelling laws seems to rest in an appeal to honor, by throwing difficulties in the way of the ordeal, and attaching to it consequences to which men of honor will, under ordinary circumstances, hesitate to subject an adversary by sending a challenge. This is particularly the case among the

officers of the United States army, who are promptly dismissed from the service for accepting, as well as for sending, a challenge ; and the laws of Mississippi attach a similar consequence, in like instances, to the members of the bar ; but while the army regulations can be promptly and vigorously enforced, it is difficult, in view of public sentiment, to punish a duellist through the courts. But even the certain action of military law has not been sufficient in all cases, and was unable to prevent the fatal conflict between such men as Commodores Decatur and Barron.

The method of prevention adopted by Gustavus Adolphus, King of Sweden, is, perhaps, the only one which would prove positively effectual. On hearing that two officers of his army were about to fight a duel, he directed that it should be fought in his presence. The parties appeared on the ground, and their sovereign also, according to his promise ; but to their astonishment they observed a gallows erected on the spot where they were to fight. "Commence your battle as soon as you please," said the king ; "but," he added, pointing to the gallows, "I am resolved that the victor shall be hanged by the neck, and the vanquished by the heels." Each one, greatly dismayed at being confronted with such terms, retired in silence, and soon after began a very intimate friendship, which continued through life.

But while duels often occur under the most deplorable circumstances, and Hamilton ! Hamilton ! has resounded from the Adirondacks to every corner of the continent, it cannot be denied that the very existence of the custom exerts an elevating influence upon the tone of society, by causing gentlemen to have a more careful regard for the feelings and honor of each other. Who can determine the salutary influence of the duel between Mr. Clay and Mr. Randolph upon the etiquette of Washington society ? And what would be the state of parliamentary ethics, at this day, in the Congress of the United States, where party faction, sectional antipathies, and personal prejudices, continually seethe in a caldron of conflicting elements, were it not for the menace of prompt and effectual accountability on the field of honor ? The effect of the duello on society is not in its con-

summation, but in the preventive virtue of its existence. It places the weak upon a clear-cut and well-defined equality with the strong, in seeking the redress of wrong, and enforces the golden rule in spite of selfishness, insolence, and all the frailties of human nature. And while a predominant gusto for the vindication of honor, or, as Virgil calls it, *gaudium certaminis*, should be discountenanced, yet, when a promptness to resent a real wrong is associated with magnanimity, it must be acknowledged to be a kind of coefficient of manhood—an index to inscriptions which we admire upon the tablet of even the heart of a savage. While the institution of chivalry, as it existed in the middle ages, has long since been borne down by the heavy tread of a cold asceticism, and our society bears but little analogy to the scenes of Ivanhoe or the days of Richard Cœur de Lion, the duello, in spite of all regrets and denunciations, will continue to give tone to the upper circles of Southern society so long as Southern honor maintains its historic standard.

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## JOSHUA CHILD.

Judge Child was a native of New England, where he had been well educated in the various schools of science before entering upon the study of law. He appeared in Mississippi about the time of the State organization, and practised his profession in the city of Natchez. His thorough education and the natural vigor of his mind enabled him to achieve a rapid progress towards eminence in his profession. He was soon accounted an able lawyer, and in 1825 was promoted to the supreme bench. About this time, however, he began to yield to a propensity to drink, which his sociability and natural ardor of temperament greatly aggravated.

There are many disgusting incidents of this character related of Judge Child, which were said to have occurred in the various counties of his circuit. It is related of him that on one occasion, in one of the border counties, while under the influence of drink he became angry with some of the members of the bar, and to vent his rage, at the close of the term he ordered an ad-

journment, mounted his horse, and rode away without signing the minutes of the court.

Judge Child was never married, and strongly manifested the peculiarities usually belonging to those who grow old in celibacy. He was a man of courage, and engaged in a duel with General Joor, upon terms of bitter desperation, and in which both parties were severely wounded.

His opinions from the bench were delivered in a lucid, terse, and forcible manner, free from all prolixity or effort at display, and resting upon the authority of the court rather than upon an array of reported decisions.

He was fond of exhibiting his authority, at times excessively satirical and somewhat overbearing; hence he was not very popular with the members of the bar. Judge Child resigned his seat in 1831, and died not long afterwards.

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## GEORGE WINCHESTER.

Judge Winchester was a native of Massachusetts, and was attracted, like many other young lawyers of talent and ambition, by the flush times that followed the admission of Mississippi into the Federal Union. He was well educated, having graduated at Harvard College; a good linguist, possessed an attractive polish of manners, a prepossessing appearance, and a mild and genial disposition.

His assiduity and superb natural talents soon procured for him a high reputation as a lawyer. His polished elocution and urbanity gained for him great success as an advocate, while the subtle penetration and elastic vigor of his mind enabled him to anticipate and disarm his adversaries, and fortify his side of the question with ingenious applications and interpretations of the very law relied upon to confound him.

Judge Winchester was seated upon the supreme bench in 1826, and held that position until 1829. He then resumed his practice of law in the city of Natchez. He was an able and eloquent judge, fond of elaborating subtleties of law and fact,

and of marshalling every feature of a case that entered into the formation of his opinion.

It is said that on one occasion, after he had retired from the supreme bench, he was engaged before that tribunal in a case involving a large amount, and which had been pending for many years, and after the arguments had been concluded the court decided in his favor, but not on the grounds upon which he had rested, whereupon he promptly moved the court for a rehearing.

He was not willing to accept the affirmance in his favor unless it was the result of what he conceived to be the proper views. In politics Judge Winchester belonged to the ultra State Rights school, and presided over the Southern Rights Convention, held at Jackson in 1849 for the purpose of adopting measures to resist the encroachments of the anti-slavery party, and was the author of the resolutions adopted by that body.

Judge Winchester was never married, and, like Judge Child, possessed many of the eccentricities of protracted bachelorhood. He had a most tenacious memory, and retained even in old age the results of the training of his youth. He died in February, 1851, old in years and full of honors—the meed of a well-spent and serviceable life.

At a meeting of the bar of Adams County, convened at the Court-house, February 5th, 1851, on the occasion of the death of Judge Winchester, and for the purpose of paying a suitable tribute of respect to his memory, the following proceedings were adopted :

" *Resolved*, That the members of the bar attend the funeral of the deceased, to be solemnized this evening.

" *Resolved*, That a committee, to consist of five, be appointed to draft and report resolutions appropriate to the occasion.

" The chairman appointed Messrs. S. S. Boyd, J. T. McMurran, Thomas B. Reed, H. S. Eustis, and Ralph North said committee, to which the chairman was added, and which reported the following resolutions :

" *Resolved*, That we have learned, with feelings of the deepest emotion, the death of our friend and fellow-laborer, George Winchester. That, whilst the severe labor of a lifetime, guided

by a calm, clear-sighted understanding, has built up for him a reputation as a lawyer to which we can add nothing by the public tribute of our respect, it gives us pleasure to bear testimony with one accord to his endearing virtues as a man—to the largeness of that heart, ever guileless and benevolent, which, in the familiar intervals of his life, was filled with good deeds and generous impulses.

"That it may profit us to remember that the same intellectual excellence which swayed the bench and 'propped the country's cause,' also reasoned out for him the truth of revelation, and enrolled our friend with the defenders of our faith, whose life 'allured to brighter worlds, and led the way.'

"That Messrs. Eustis, McMurran, and Hewett be and they are hereby appointed a committee to take the necessary steps for the erection of a suitable monument over the grave of the deceased.

"Which report was unanimously adopted; and on motion it was then

"*Resolved*, That the proceedings of this meeting be reported by the chairman thereof to the Circuit Court of Adams County, at its next term, and that the chairman move the court to cause these proceedings to be spread upon the minutes of said court."

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## HARRY CAGE.

The subject of this sketch was a native of Tennessee, and belonged to a large and highly respectable family. His early educational advantages were limited, and he never acquired attainments sufficient to characterize him as a profound lawyer or man of learning. He emigrated to Mississippi about the time of the formation of the State Government, and in 1829 was elected to a seat upon the supreme bench, which he held until the reorganization of the courts under the Constitution of 1832. He was then elected to Congress, in which he assumed an active part in the exciting discussions of the period. In 1834 he resigned, and retired to his plantation in Louisiana, where he died.

Judge Cage owed his success more to his vivacity and congeniality of disposition than to any professional qualifications. He possessed social qualities of the highest order. Full of life and anecdote, he was the central figure of every social circle, while his ready wit and apt repartee, together with his easily aroused sympathies and power of feeling, gave him considerable forte in the art of persuasion.

While he seems to have had but little relish for office, he was yet evidently more of a politician, both by nature and by culture, than a lawyer. He is said to have been fond of miscellaneous and light literature, such as was congenial to his facetious taste and furnished him with tales of humor and anecdote. His manners were kind and unassuming, but his gentle and amiable disposition reposed upon a spirit of indomitable courage.

As a judge he was conscientious and upright, patient and polite in his audience, and accorded a courteous consideration to all who approached him. He was, moreover, of an energetic and enterprising nature, sincere and manly in his bearing, and a general favorite with the members of the bar.

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## ISAAC R. NICHOLSON.

Isaac R. Nicholson was a native of Georgia, whence he emigrated to Alabama, and practised law in the northern part of that State, where he achieved success and reputation. He then removed to Mississippi, and in its rich field soon rose to eminence in his profession.

He was a man of limited education, and was possessed of no remarkable natural endowment, unless it was that of an inexhaustible business capacity. For many years he represented the county of Copiah in the Legislature, and in 1827 was chosen Speaker of the House of Representatives. Here his official devotion and business tact served to promote his popularity and open the way to his judicial elevation.

In 1829 he was appointed to the supreme bench, but was superseded by the intervention of the Constitution of 1832,

under which the entire judiciary system of the State was remodelled. He then resumed his practice at the bar of Natchez, where he resided until his death, which occurred at that place.

While Judge Nicholson might not have been a profound lawyer, he was a successful practitioner ; if not *peritus jure*, he was familiar with all the features of practice and the principles of justice, and superseded by a sound judgment and studious accuracy the advantages of greater depth and latitude.

As a judge his decisions are terse and forcible, firmly fixed upon the points in question, and logical to a certain intent. In consequence of his industry, his accurate perception, and his fidelity to his official duties, Judge Nicholson was called upon to decide many of the cases in our early courts, and in which many important questions were involved, some of which were then discussed, perhaps for the first time in this country.

In the case of the State *vs.* Johnson (Walker, 392), he discussed and adjudicated the question which had been long agitated by the courts, both in this country and in England, as to the disqualification and competency of jurors. The point in controversy arose from the form of the question put to a juror on his *voir dire* in the court below. He was asked if he had "formed *or* expressed an opinion," instead of "formed *and* expressed."

The following decision of Judge Nicholson in this case is introduced as an indication of his manner of treating a question, and on account of the rarity of its accessibility, in consequence of the scarcity of Walker's Reports :

"The old English authorities lay down the rule that, to incapacitate a juror for sitting upon the trial, he must have formed and expressed his opinions against the accused, with malice or ill-will. This rule has been much softened ; and, indeed, such is not the doctrine of the courts of this Union. Although the common law is opposed to trying an individual by men who have prejudged his case, yet, in most of the States of the American Union, we have constitutions which guarantee to the accused a fair and impartial trial.

"By the Constitution of Mississippi (Declaration of Rights, Sec. 10), a speedy public trial by an impartial jury of the county is given to the accused. But how are we to ascertain

the fact whether a juror stands indifferent between the parties? This must be drawn either from the juror on his *voir dire*, or shown by evidence *aliunde*.

"I believe the first decision on this subject, in the American courts, is to be found in the trial of Colonel Burr for high treason. The decision of Chief Justice Marshall in that case has been looked to by the State courts as the pole-star by which they were to be guided.

"Judge Marshall says (Burr's Trial, 1 vol., 44) that 'to have formed and delivered an opinion, was sufficient to exclude from the jury, but that slight impressions on the mind are not sufficient.'

"In the case of Vermilyea, *ex parte* (6 Cowan, 563), Mr. Justice Woodworth says that

"'To have formed and expressed an opinion from a knowledge of the facts is good cause of challenge, and it cannot be material from what source the knowledge was derived; if the bias proceeds from a preconceived opinion, it equally affects the accused.'

"Chief Justice Spencer, in the case of Vanalstyne, decided that 'if a juror had formed and expressed his opinion from a knowledge of the facts, or from the information of those acquainted with the facts, it was good cause for challenge; but if the opinions of jurors were formed on mere rumors and report, such opinions were not sufficient to disqualify.' On the application for a new trial in the case of Fries, Judge Iredell put the question on the ground that 'whenever a predetermined opinion is formed, from whatever motives, it creates an improper bias, extremely difficult to get rid of;' and the same doctrine is held by Mr. Justice Maxey, in the case of the People *vs.* Mathew (4 Wendell, 229).

"The rule then, to be drawn from these authorities, I think, amounts to this: that if the juror has made up and expressed an opinion, either from a knowledge of the facts or from the information of those acquainted with the facts, or a decided opinion from reports, he does not stand indifferent between the parties, and should be excluded from the jury; and the situation of the juror must be ascertained by triers appointed for

that purpose, or by the court; and when referred to the court it stands as a demurrer to evidence.

"In the case of Flowers, decided in this court at the December Term, 1829, I am satisfied that I went too far in laying down the rule with respect to the examination of the juror on his *voir dire*. I there stated that if the juror, on being interrogated, answered *positively* and *affirmatively* that he had formed and expressed his opinion, the court should set him aside without further inquiry. Since the decision of that case I have presided on the circuit at the trial of seven capital cases, and experience has fully satisfied my mind that jurors frequently answer the question without understanding its true meaning. It is frequently the case that a juror who has barely heard the case from report, and has but a slight impression on his mind, will answer, affirmatively, that he has formed and expressed opinions; but upon further examination it will be discovered to amount only to a hypothetical and not a decided opinion. In fact, there are but few jurors who understand the difference between a fixed and predetermined opinion and a hypothetical one. Besides, much is often ascertained from the manner in which the juror answers the questions: whether he shows sober indifference, an agitation of feeling, or signs of ill-will. In fact, it is almost impossible, from the nature of things, to lay down any invariable rule on this subject. From the necessity of the case, much must be left to the discretion of the judge, who is '*pro hac vice*' of counsel for the accused, to see that he has a fair and impartial trial.

"In this case the juror was asked whether he had formed *or* expressed, instead of formed *and* expressed, an opinion that would have any influence on his mind in the determination of the case as a juror. I have not been able to find a solitary case, in the American decisions, where the form of interrogatory has been practised upon, which is set forth in this bill of exceptions.

"The reason given in the books for the conjunctive form of interrogatory is that a man who has made up his opinion, and expressed it aloud, will be much more apt to adhere to it than if he had only formed it and kept it concealed.

"This reason is not satisfactory to my mind. I think if a juror has made up a fixed opinion from a knowledge of the facts, although he has kept that opinion locked up in his own breast, he is not a competent juror; but if he has only fashioned in his mind an opinion from report, and has not given utterance to that opinion, it would not be sufficient to exclude him. . . .

"An impartial juror is one whose mind is open to receive the impressions to be made by the testimony; one whose mind is poised upon the scales of indifference, and capable of weighing the testimony adduced on trial in opposition to floating rumors."

Yet, with all due respect to the opinion of the learned judge, I must subjoin that it is difficult to perceive how any honest juror could be hindered in forming a true opinion from the true state of facts, by reason of a prior expression of an opinion "only fashioned in his mind" from mere rumor and report. The implication of this doctrine would assert that honesty must be sacrificed to a mere specious assumption, and the justice of conscience rendered subservient to a repugnant consistency. It would, in short, disqualify a very large majority of men for sitting upon an *honest* jury—a conclusion which if based on other grounds might not be far from the truth; for an even-handed dispensation of justice under all circumstances is perhaps the most difficult task ever imposed upon frail humanity, and one in which none but the hand of Heaven is infallible.

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## ALEXANDER MONTGOMERY.

The subject of this sketch was born and reared at Natchez, in the Mississippi Territory. He possessed a brilliant intellect, and after having obtained the best education that the schools of his native town could afford, he applied himself to the study of law, which he prosecuted with such diligence and thoroughness that he became one of the most learned and profound lawyers at the bar of Mississippi. He had a peculiar aptitude for his profession: a keen sense of duty, a natural energy of temperament, and an inquisitive turn of mind that always descended into

the very depths of investigation. He was not so much distinguished for any one predominant quality as for a copious blending of all such as enter into the character of a justly eminent lawyer. He devoted all his mental and physical powers to his profession, and consequently his knowledge of law was deep, and his success was the merited reward of his industry. His powers of perception were rapid and acute, his judgment sound and penetrating, and his reasoning powers were blended with a glowing imagination.

To these intellectual traits Mr. Montgomery added the beauties of great moral worth. His integrity was superior to every influence, and his devotion to duty beyond the reach of all temptation. While his professional ethics were stern and dignified, his manners were softened by a complaisancy and polish that betrayed the well-bred gentleman, and kind and amiable man.

In 1831 he was appointed to a seat upon the supreme bench of the State, but was superseded in 1832 by the provisions of the new Constitution, which introduced an elective judiciary. Judge Montgomery was an able jurist as well as an eminent advocate, and had he been retained upon the bench his career would doubtless have been as brilliant and exemplary as his success at the bar.

On retiring from the bench Judge Montgomery resumed his practice of law in Natchez, in connection with his former partner, the distinguished Samuel S. Boyd, and the firm was among the most celebrated in the State. He continued his practice to a great age, and died a few years since at the home of a relative in Warren County.

# CHAPTER IV.

## THE BAR—EMINENT LAWYERS—1817-1832.

ROBERT J. WALKER—WILLIAM B. GRIFFITH—WILLIAM VANNERSON—SPENCE M. GRAYSON—ALEXANDER G. M'NUTT—WALTER LEAKE—EDWARD C. WILKINSON—EUGENE MAGEE—BUCKNER C. HARRIS—JOHN T. M'MURRAN—SAMUEL S. BOYD—SAMUEL P. MARSH—JOHN HENDERSON—RICHARD H. WEBBER.

In treating of the characters of the distinguished gentlemen of the Mississippi bar whose eminence was based upon true merit ungarnished by the gloss of official significance, the author takes no shame to himself from the inadequacy of his ability to cope with the noble lessons and sublimity of his theme. To depict, in the style of aptitude and the language of felicity, those transcendent qualities and traits of character which wrested the noblest achievements from the frowns of fate ; the genius that hurled the gauntlet of triumph into the face of every vicissitude of fortune, and wrenched the meed of fame from the cruel clutches of adversity, would surely daunt the efforts of any pen undipped in the unction of eloquence and unhallowed by the benison of inspiration.

But whatever may be his shortcomings, he yet cherishes the hope that, if he cannot scale the height of his subject, he can at least direct the eyes of admiration and the efforts of ambition to the dazzling gems that cluster on its brow.

## ROBERT J. WALKER.

The subject of this sketch possessed *par excellence* one of the brightest intellects that adorn the history of the bar of Mississippi, and one that would have been an ornament to any bar, in

any country, and in any age. Robert J. Walker was born in Northumberland County, Pennsylvania, in July, 1801, emigrated to Mississippi in 1826, and joined his brother, who had preceded him, in the practice of law in the city of Natchez. Mr. Walker's education was thorough and comprehensive. He was well versed in most of the schools of science, and prior to his study of law had graduated at the celebrated medical school in Philadelphia. He was a fine linguist, thoroughly familiar with classical history, and had acquired no little proficiency in the polite literature of the French language.

He soon achieved a high eminence at the bar of Mississippi, which he maintained with increasing lustre while he remained in the State. He was assiduous in the study of his profession, and became learned in all the branches of both the common and civil law : a knowledge of the latter being necessitated by the conflict of tenures which so much perplexed our early courts.

In 1828 he was appointed to report the decisions of the Supreme Court. This task he performed with fidelity and ability, and in 1832 presented the 1st Mississippi Reports, which embodied the decisions of the court from its establishment, in 1818, to that time. In this work he never failed to assail whatever he conceived to be an error of an important nature, and his reports are interspersed with many learned notes of this character.

In 1836 he was elected to succeed Mr. Poindexter in the United States Senate, for a full term from the 4th of March, 1835, and in 1841 was re-elected for a full term, from the 4th of March of that year. During his career in the Senate he was characterized by the same fidelity, intellectual culture, and eloquence which had rendered him so eminent at the bar, and during that time became particularly distinguished by his arguments on the "Mississippi slavery question." He was a warm and strenuous advocate of the independence of Texas ; and even after the fall of the Alamo and the butchery at Goliad, and when the Mexicans were apparently waging a war of extermination to all parts of that country, he did not for a moment despond or doubt the final result ; and as early as the 22d of April, 1835, he called the attention of the Senate to the struggle, and suggested that whatever surplus funds were in the

treasury should be reserved for the purpose of acquiring Texas from whatever might remain of the government *de facto* of that country, and declared that the people of the Mississippi Valley would never permit Texas to be again subjected to the dominion of Mexico.

In 1845 Mr. Walker was appointed Secretary of the United States Treasury by President Polk, from which he retired in 1849. He was the author and the most able and efficient advocate of the revenue tariff of 1846.

In 1857 he was appointed Governor of Kansas Territory by President Buchanan ; but, having espoused the anti-slavery party, he resigned in 1858, in consequence of the adoption of the Lecompton Constitution, and its approval by the administration.

In 1861 Mr. Walker declared himself in favor of the preservation of the Union, and during the war resided in Europe as the financial agent of the Federal Government, whither he was sent chiefly to defeat the attempt of the Confederates to negotiate a foreign loan. This interception he effectuated by representing the Confederate President as being a citizen of Mississippi, and as having been a leader in its repudiation of the Union Bank bonds ; and as these bonds were held by European capitalists, they were not slow to be instilled with the fear that a like result would attend any loan made to the Confederacy. This representation, while it was without foundation in truth, by thwarting the efforts of the Southern people to obtain money abroad, was no less destructive to their cause than the fatal recoil at Gettysburg. Indeed, it was the poisoned arrow from whose wound the Confederacy never recovered, and by which it was, in the beginning, shorn of half its strength.

Mr. Walker was a lawyer of searching industry, and his success at the bar was due in a great measure to a careful and accurate preparation of his briefs. He left no leaf unturned that would enable him to sound his cases, and to anticipate and thwart his adversary, or strengthen the merits of his own side of the question ; consequently he was never surprised or taken at a disadvantage. He was alert, discerning, and acute. His powers of perception could not easily be evaded, and his mem-

ory possessed a clearness and tenacity, which enabled him at all times to convoke the results of his extended culture. He was a fascinating and edifying speaker, clear and precise in his arguments, and strictly scholastic in his choice of language and mode of expression. He possessed in a high degree the *vox argentea* so much commended by Cicero.

He was kind and benevolent in his disposition, gentle and affable in his manners, generous and magnanimous in his professional deportment, benign and playful in his features, charitable and confiding in his nature, and gained the respect and admiration of all who came within the reach of his influence. He was of that type of character which never fails to win its way to an exalted estimate among men. He died in the city of Washington in November, 1869.

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## WILLIAM B. GRIFFITH.

William B. Griffith was a native of the State of Maryland. He was of a wealthy family, and possessed the advantages of early culture and a finished education. He had also studied law, and acquired a knowledge of the elements of that science prior to his removal to Mississippi. He located at Natchez about the year 1818, and began his professional career at that Temple Bar of the West, where he soon attained distinction; and having formed a co-partnership with John A. Quitman, the firm became one of the most celebrated in the State.

Mr. Griffith was gifted with intellectual faculties of a high order, which, with his habits of application and his professional devotion, enabled him to master the law in all its branches, and he became familiar with all its abstruse features and subtle principles. His mental qualities were adorned with an acute penetration and a brilliant perception, and his judgment was characterized by an unerring discrimination. His logic was clear, close, and conclusive; and his powers of argumentation were among the most brilliant of his professional qualifications.

His high character as a lawyer was a combination of learning and the finest social accomplishments; he was a man of fasci-

nating and courtly manners, mild and forbearing in his intercourse with the many uncouth characters with whom the lawyers of that time were brought in contact. He was a graceful and attractive speaker, and is said to have been the most polished orator that had yet appeared in Mississippi; and his eloquence was of that gentle and persuasive character which appeals more to reason than to passion: he never indulged in coarse invectives or vituperative assaults, but endeavored to reach the affections as well as the judgment of his audience, whether a jury or popular assembly, by amiability of manner and clearness of reason.

Such were the characteristics of a man whom both nature and culture had marked for the fee of fame; but in the meridian of life his brilliant career was suddenly severed by the Nemesis of all human greatness. Mr. Griffith fell a victim to that scourge which has of late years so often ravaged portions of the South, and died with yellow fever in the summer of 1829, leaving a young and accomplished wife, the daughter of Judge Edward Turner, afterwards Chief Justice of the Supreme Court.

### ORATION DELIVERED ON THE FOURTH OF JULY, 1819, BY WILLIAM B. GRIFFITH, ESQ.

Fellow-citizens: It is with mingled sentiments of pride and of awe that I rise to address you. Of pride, when I consider myself as the organ of this enlightened assembly in the expression of their joy and congratulation upon the return of the anniversary of our national independence; of awe, when I reflect upon the magnitude of the event and the sanctity of the occasion which we are assembled to commemorate. Be present, then, spirits of our departed heroes! descend from your exalted sphere, to aid and inspire us this day, while we offer up, on the altar which national gratitude has erected, the humble but sincere effusions of republican congratulation! We approach you, not with the fragrant incense of the East or the pompous glories of the Hecatomb: we offer up what we conceive to have been the object of your labors upon earth; perhaps we may say, without the imputation of impiety, an addition to the joys of heaven—the grateful homage of a nation of freemen. To you,

surviving brethren of the Revolution (if any such remain in this assembly), this day must recall recollections which of themselves will form your sweetest, best reward.

On this day, forty-three years since, our fathers framed and pronounced the Declaration of Independence which you have just heard read. Rising in their might, and relying upon the justice of their cause, they ventured, young and inexperienced, to place themselves in hostile array against the armies and fleets of Great Britain. Encompassed with danger, surrounded by open enemies, and friends more dangerous still, because they were vacillating; unprepared with means, unskilled in the arts of war, behold this infant nation rearing the standard of war, and bidding defiance to the veteran legions of the foe. Behold the patriot soldiers of the Revolution suffering under the pangs of hunger, or exhausted with the fatigues of the camp; at one time compelled to disperse to obtain a scanty subsistence, at another yielding to superior force, and reduced to the sad necessity of turning their backs upon the foe. Who does not quake with fear, or tremble with indignation, when he remembers the privations, the distresses, and despair to which our armies were reduced? To what cause can we attribute that persevering courage, that magnanimous fortitude, which enabled them not only to bear up against, but to rush forward and turn the current of fortune; to hurl back upon the enemies of freedom the weapons intended for their own destruction? It was the Genius of Liberty. Rejecting the worn-out doctrines of passive obedience and the divine rights of kings, abhorring the dictates of imperial pride and despotism, the same spirit which impelled the victim of fanatic zeal and bigoted priestcraft to quit the shores of old England and plant a colony in a new world, to brave the dread inhabitants of the forest, and their still more formidable enemies the savages—that spirit now animated our fathers; that spirit gave wisdom to their plans and energy to their actions.

Yes, sacred Genius of Liberty! without thee, Washington had been but the subaltern of a king instead of the father of his country; without thee, Franklin had remained the humble printer of a provincial district, instead of the representative of

a free and united people. Without thee, the glorious achievements which have immortalized the heroes of Breed's Hill and Saratoga, of Lexington, Monmouth, and Trenton, had never been heard of in history. The boundless and fertile regions which are now inhabited by millions of freemen in the enjoyment of rational liberty, had still been the haunts of the howling wolf or the roaming savage. But, happily for us, fellow-citizens, the oppressions of the mother country soon reached a point beyond which they could not be extended. They blew into a flame the spark which might perhaps have been easily smothered by prudence and forbearance. I will not attempt to point out the causes, to mark the progress and display the result of our revolutionary contest. The recital of these events, in which we are all so deeply interested, would be unnecessary, because I am persuaded they are deeply engraven on your hearts. Let me rather call your attention for a moment to the period which succeeded the establishment of our independence.

After having successfully asserted their claims to liberty and an independent government, and extorted from our enemy a reluctant recognition to that effect, a task remained of still greater magnitude and difficulty. So long as the common danger existed, the old Articles of Confederation were found sufficient to unite our citizens in the general defence; but no sooner was this bond relaxed than a crisis presented itself which threatened at once to mar the blessings so dearly purchased by the best blood of our country. Private interests, and passions which had long lain dormant, now reared their heads. State prejudices and local jealousies threatened to usurp the dominion of public spirit and disinterested patriotism. Ambitious and unprincipled demagogues endeavored to inflame the passions of the people, and thereby create confusion. At this moment of dismay, when nothing but firmness and decision united to consummate wisdom could have saved the Confederation from ruin, the sages of the Revolution advanced to uphold the fabric which they had erected. They had fought the battles of their country; they had expended their treasures and their blood in defence of her rights: they now stepped forward to secure in the cabinet what their arms had acquired in the field. They formed the Consti-

tution under which we are at present governed, and presented it for the approbation of the States. Here, fellow-citizens, was exhibited to the world a spectacle of the utmost grandeur and sublimity: a nation of freemen canvassing with deliberation, amending and finally adopting the charter of their rights—a form of government certainly the best calculated of any which the world has yet seen, to secure every natural right necessary to our happiness. As it was formed without violence or bloodshed, so it went into operation without difficulty or resistance.

If we were previously indebted to those who obtained, at the point of the bayonet, the recognition of our independence, how much was the obligation enhanced when they placed it upon so firm and durable a foundation! Other nations have been goaded on by the oppressions of a despot to snap their chains asunder and assert the unalienable rights of man; other nations have had it in their power to frame for themselves governments calculated for their happiness; but in vain do we search the pages of history for the example of a revolution similar to our own. In some instances one tyrant has been put down only to give room for another more cruel than the first. In others a many-headed monster, under the form of an aristocracy, has sprung from the ashes of liberty; while in some cases the assertion of freedom has given rise to such abominable cruelty, such unheard-of atrocities, that human nature revolts at the recital. Of this latter description was the revolution in France. Commenced under the auspices of those who admired and envied our own, how differently, alas, was it conducted! how differently terminated! Like the wars which have been commenced under the mask of religion, the atrocities of those monsters who disgraced the cause of freedom in France were committed under the banners of liberty. When the sacred cross of the Redeemer was carried as the ensign of the crusader, and used as the signal for murder, rapine, and conflagration; when the meek religion of Jesus was employed to sanction bloodshed and palliate crimes, its deluded followers believed themselves working out a blessed immortality, and advancing the glory of their spiritual as well as temporal masters. Thus Barras, Collot,

D'Herbois, and Robespierre, with the other monsters of the Jacobin Club, erected statues to liberty and altars to the genius of their country. But while the people were deluded with these outward symbols, they exercised a cruelty the more detestable because it was unnecessary, a tyranny the more galling because it went under the name of liberty. The enthusiasm of other nations who sympathized with the real patriots in France was gradually converted into disgust and horror, when such was found to be the course of the revolution. It will always afford matter of deep regret that such should have been the event of a struggle capable, in itself, of the most beneficial results, not only to France herself, but to the rest of Europe.

But to return from this digression. Immediately after the organization of the Federal Government our prosperity commenced. Under the auspices of him who led our armies to battle during the war, the arts of peace were no less successfully cultivated. Formed alike for the din of arms and the retirement of peaceful life, equally great in the field and in the cabinet, he offered to the world the rare and imposing spectacle of the Chief Magistrate of four millions of freemen seated, like a father in the midst of his children, administering a government of law and of liberty. Without the external insignia of royalty, unadorned with the gems and the purple of a monarch, deriving no extrinsic aid from the splendid tinsel of a court, he shone with a dignity unrivalled because it was native; he excited a respect which was unequalled because it was the involuntary homage of the heart, at all times due to exalted virtue. Superior to passion and inaccessible to temptation, he was not devoid of ambition; but it was of that noble order which aimed rather at the happiness of his fellow-citizens than his own aggrandizement. Called to the highest office of our country by the unanimous suffrages of his constituents, he took the presidential chair with a modesty surpassed only by an ardent love for his country; and when retiring to the walks of private life, he carried with him the warm affection and enthusiastic admiration of every honest man and every good citizen. His fame was founded upon virtuous actions and exalted patriotism. Great and good man! the united voice of your own and of

other nations has pronounced your eulogy, and borne testimony to the justice of the praises which we delight to bestow upon your memory. After ages will continue to view with delight the wreath which a grateful country has woven for your brow. Heroes and statesmen will look to your character as their bright exemplar, and patriots of every succeeding age will pronounce with reverence and delight the name of the immortal WASHINGTON.

Under his administration, fellow-citizens, the resources of our country developed themselves. Public credit, impaired during the Revolution, was restored. Commerce and manufactures advanced with rapid strides, while agriculture rewarded with abundance the labors of the cultivator. The calm which had thus fortunately succeeded the storm of the Revolution gave leisure for the active employment of all the arts of peace. Literature and the sciences now raised their fallen crests, and ventured to come forth from the covert places to which they had fled when the blast of the war-trumpet was heard. The war-worn patriot resigned the armor which he had buckled on at the call of his country, and exchanged the duties of the soldier for those of the citizen. Hitherto known only as provinces of the British Empire, the United States now took their stand as one among the nations of the earth. From the close of the revolutionary contest until the commencement of our difficulties with the two great belligerents of Europe, our situation was truly enviable. While almost all the nations of the world were engaged more or less in destructive and ruinous wars, we alone were at peace. Far as the eye could reach, or even the imagination penetrate, we surveyed our extensive, our luxuriant possessions. From the cold and rocky regions of the North, where the hardy mountaineer collects his scanty harvest, to the mild and genial districts of the South, where the earth affords to the cultivator a rich reward for his toils, the delighted eye of the philanthropist surveyed the joyful scene of a free, a happy, and a contented people. Nursed under a government propitious to liberty, and favorable to the development of our finest faculties, every spring of the human mind was at work, and every affection of the heart had room to expand. Our infant manufac-

tures bade fair to rival the boasted fabrics of Great Britain and France ; our commerce, like the fleecy clouds which adorn the summer day, whitened every sea, and bore to the most distant climes the produce of our soil and the fruits of our industry. But alas ! fellow-citizens, this state of prosperity was destined too soon to be altered. Other powers could not conduct their bloody contests without infringing the rights and injuring the property of neutrals. Under pretence of searching for the property of their enemies, they assumed the right of visiting all neutrals. From this first step, the *fair exercise* of which is no doubt sanctioned by the laws of nations, the transition to the impressment of American seamen and the confiscation of *bona fide* American property was as easy as it was unprincipled. The restrictive system entered upon with a view to the cure of these evils, though productive of some important benefits, was not attended with the expected success. Instead of effecting the desired object of compelling the belligerents to relax their iniquitous system of measures, it served only to paralyze more completely our commerce and lessen our resources. The great staples of the Southern and Western States were confined like a dead weight at home, unproductive and useless. The merchants and traders of the Eastern and Middle States united with the planters of the South in calling upon the Government for something more decisive. Such a state of things could not long exist. National honor, as well as national prosperity, was at stake, and nothing presented itself but the alternative of an honorable war or a ruinous and disgraceful submission to outrage and insult. War was accordingly declared, on the 19th day of June, 1812.

With the more remarkable events of this contest you are too familiar to render it necessary or even excusable in me to dwell upon them. But I cannot forbear detaining you for a moment upon one in which I am sure you feel particularly interested—one in which every American must glory. At the period when it occurred our Government had been restricted in its means and crippled in its resources by the extremes of party spirit. Faction, with her hydra head, distorted the views, misrepresented the motives, and ridiculed the measures of the Government.

The army was discouraged, and the people desponding. Elated by these circumstances, and calculating upon our distresses, our enemies even went so far as to attempt a dissolution of the Union. Buoyed up by the success of the Allies in completing the downfall of Bonaparte, Great Britain directed all her energies against this country, and determined to attack us at all points. While her emissaries were at work in New England endeavoring to foment the discord and blow into a flame the dissension of parties, an expedition was fitted out in the West Indies which was intended to destroy the resources of the whole Western country. You already perceive, fellow-citizens, that I allude to the attack upon New Orleans. Next to the event which we this day celebrate, that which I now allude to should be dear to the recollection of our country. All eyes, all hearts were directed towards the gallant army under General Jackson. Drawn up in front of the most formidable armament which had ever landed in hostile array upon our shores, a raw band of undisciplined militia were about to engage in mortal combat the regularly disciplined and veteran soldiers of Great Britain.

It was here, fellow-citizens, that our brave general displayed those qualities which have raised him so high in the estimation of his countrymen. He observed with coolness the preparations for the attack, and prepared with skill the necessary means of defence. By the wisdom of his arrangements, the quickness of his movements, and the undaunted energy of his mind, he encouraged and fixed the few who wavered and feared, he compelled the ill-disposed to assume, at least, an apparent zeal for our cause, and he raised to enthusiasm the ardor of those gallant men who had joined him from the neighboring States of Kentucky, Tennessee, and Mississippi. But to you, fellow-citizens, why this detail? To you who were his companions in arms on the ever-memorable 8th of January, 1815? To you who saw the British line one moment advancing gallantly with fixed bayonets to the trenches, and the next prostrate in the dust? Like the blast of the hurricane when it passes over the forest, mighty and resistless in its course, it has gone by; but, alas, how changed the scene! The tall oak with its stately

branches has kissed the earth, and the loftiest trees of the forest lie riven and disfigured. Thus the proud army of our invaders was reduced in a few minutes to the miserable "remnant of a thing that was." Such, fellow-citizens, was the result of this formidable expedition, and it is scarcely necessary to add that this battle not only preserved from the most serious disasters the whole country on the banks of the Mississippi, but diffused over the close of the war a luminous and brilliant streak of glory.

Reposing, as we now do, in the bosom of our families, in the enjoyment of peace and prosperity at home, and honor and respect abroad, it may be asked, why we recur to these scenes of war and bloodshed? Why conduct us to the camp and blood-stained field? It is, fellow-citizens, for the purpose of keeping alive those sentiments of patriotism which animated our citizens in the day of battle. It is with a view to stimulate to fresh deeds of valor the rising generation of our country, should an invading foe again pollute our shores. It is for the satisfaction of paying the delightful debt of gratitude—the gratitude which a nation owes to her worthy sons. With the feelings which animate the breast of a mother when she clasps to her arms her protecting offspring who have rescued her from the grave—with such feelings as these does our country greet the recollection of the heroes who have preserved from disgrace the national escutcheon. The Genius of Columbia looks down from above and approves the annual tribute of respect and gratitude which we are this day paying to the patriots of the Revolution and their brave descendants. She points to the tablet of Fame, on which their names are inscribed; she invokes the youth of our country to bear their virtues in mind, and when occasion offers to imitate their bright example. Surely, if there is any reward for patriotism, any stimulus to a noble ambition, it is the hope of living forever in the hearts of our countrymen.

In the ancient times of the Athenian and Spartan republics, it was such rewards as these which formed the heroes of Marathon and Thermopylæ. The spot on which their fellow-citizens had conquered and died was consecrated with tears, and each returning anniversary of the day was celebrated by a solemn

festival. The young men and maidens, dressed in white and moving in solemn procession, preceded by the priests bearing the insignia of their religion, strewed their graves with flowers, and crowned with cypress and laurel wreaths the simple column on which their names and virtuous actions were recorded. Perhaps at such a festival as this Epaminondas first felt himself inspired with devotion to his country ; here, perhaps, his infant mind kindled at the recital of martial deeds, and blazed with the ardor of patriotism against the enemies of his country. Here the gallant Spartan imbibed those principles which have immortalized the straits of Thermopylæ. Here Demosthenes may have made the first essay of that eloquence which united Greece in one expiring effort for the preservation of liberty. Like them, fellow-citizens, let us leave to the monarchs of Europe to remunerate merit with garters, and encircle with stars the breasts of their great and brave men. Be it ours to reward our heroes with gratitude and love. Let us erect to them monuments more durable than brass, more lasting than the pyramids of Egypt. So long as liberty shall exist and virtue be reverenced, while patriotism shall be honored and bravery admired, will we preserve in our hearts the recollection of their merit and the remembrance of our obligations.

After having thus briefly glanced at some of the more important events of our own history, permit me, fellow-citizens, to congratulate you on the present happy state of our own country, and of the world. The great political volcanoes whose repeated eruptions have desolated Europe during the greater part of the last century have at last abated their fury ; a holy calm has succeeded the storm of war, and the wretched inhabitants begin to revive. The earth has resumed its verdure, and we fondly anticipate a protracted season of peace and prosperity. It affords also matter of pride and pleasure to observe the conciliating disposition and friendly attitude manifested towards us by foreign nations. Even our old enemy, Great Britain, seems to be at last convinced that it is sound policy to remain at peace with us. Whoever, indeed, considers the immense amount of her manufactures annually consumed in this country, and observes how heavily the balance of trade is against us in our com-

mercial concerns with her, will wonder what infatuation could ever have blinded her politicians upon this subject. It became evident, during our last contest with her, that every year added to the excellence and increased the quantity of our domestic manufactures. Two years' longer duration of the war would have placed them upon so firm a footing as to have defied competition. When we reflect what a deadly blow this circumstance must have inflicted on the manufacturing interest of Great Britain, we cannot but condemn the rash and short-sighted policy which could thus jeopardize the principal pillar of her greatness.

We turn with pleasure from the policy and conduct pursued by European powers to the equitable and magnanimous measures of our Government in her late transactions with Spain. After a protracted negotiation, spun out by all the arts of diplomacy and chicane which could be summoned in aid of the "adored Ferdinand" by his worthy representative, Don Onis, our affairs seemed at last to be drawing to a crisis. The transfer of the Floridas, or the liquidation of the demands of our merchants for the unjust depredations committed on our commerce, appeared to be the only methods of preventing war. At this interesting moment, in the prosecution of the Seminole War our troops occupied Pensacola, the key of the Floridas, and we may say, indeed, of the Gulf of Mexico. By retaining possession of this important post, our Government would have secured the most obvious advantages. In case of a rupture with Spain we obtained the "vantage ground," from whence every blow would fall with double force. The measure, though not strictly just, would have been easily excused by the example of almost every civilized nation. Russia, Austria, and Prussia could not exclaim against it after the partition of Poland; France could not object, when she remembered the *arrondissement* of her own empire; England could not upbraid us while the battle of Copenhagen was staring her in the face. The world would have looked on and palliated if not praised the measure on the score of political expediency. But mark the contrast: we had penetrated into the Spanish dominions solely with a view to root out our savage enemies; this object once accomplished, our Gov-

ernment declared their readiness to deliver up the post to any force competent to maintain the respect due to the neutrality of the Spanish Government. The subsequent transfer of the Floridas has precluded the necessity of doing so; leaving, however, no doubt, from the declarations of our Government, that our faith and honor would, in any event, have been most scrupulously redeemed.

We appeal confidently to the history of nations, and challenge the production of an instance of conduct more truly magnanimous than that of the President in this transaction. It has already met with the unqualified approbation of the most enlightened citizens in the community, and called forth from foreign nations an expression of praise, the more gratifying because we may suppose it to have been reluctantly given. While other powers are endeavoring to extend their domains by the exertion of authority and physical force, regardless of the rectitude or depravity of the measure, it must be to us a subject of pride to observe the magnanimity of our own Government under similar circumstances. Rejecting the low arts of diplomacy, and the more dangerous and formidable application of unjust warfare, it seems to demonstrate to the world that in the intercourse of nations as well as of individuals, "Honesty is the best policy."

Such has hitherto been, and such we trust will ever be, the characteristic feature in the administration of the United States. The virtue and the morality of a people depend much on the example of the Government, and the corruption of the latter is almost always the sure forerunner of the former's degradation.

From the contemplation of our own happy condition at this time you will turn, no doubt with pleasure, to sympathize with our fellow-republicans in the South who are laboring to throw off the trammels of a despotic and imbecile monarch. The time is fast approaching when the fertile and extensive regions of South America will be inhabited by a race of people who are destined to enjoy the blessings of liberty and independence. The republican banners now float in triumph over the liberated provinces of Chili and Peru, while the victorious San Martin is driving the remnant of the royal armies from their last fortresses.

Already has the Genius of Liberty risen in its splendor upon this luxuriant and fertile portion of the globe. Already have the clouds been dispersed which superstition and the policy of a weak monarch had accumulated round the minds of the people. Religion, before enthralled in the mystic mazes of priestcraft, begins to come forth in her lovely and native colors—not that religion which sits in terror upon the dark and gloomy throne of the Inquisition, presiding in blood over the groaning and tortured victim of the rack; not that religion which lights the sacrilegious fires of an *auto da fé*, and wafts to the throne of the Eternal as an acceptable sacrifice the parting spirit of the wretched heretic, whose heinous sin consists in a conscientious difference of opinion; no, it is the mild religion of Jesus, divine in its origin as it is glorious in its progress, gathering under its branches the scattered nations of the earth, not by the edge of the sword, but by the mild efforts of persuasion and godlike charity.

And can we, fellow-citizens, while this glorious revolution is progressing, look coldly on and remain idle spectators of the scene? Can the descendants of the heroes of '76—the immortal spirits who threw off the shackles of Great Britain, and made a successful appeal to the God of Armies; who called aloud upon the nations of the earth to acknowledge and secure their independence—can they be deaf to the appeals of millions of fellow-Americans who are striving in the same noble career? No! Let us rather offer to the world the glorious spectacle of a free and enlightened republic rearing her star-spangled banner to extend the influence of freedom, to spread the blessings of liberty and independence throughout the fairest portion of the globe, to dispel the mists which superstition and ignorance have left over the face of nature, and like the glorious orb of day to scatter light and genial heat through the dark and gloomy mazes of Spanish policy. How glorious in after ages, when the plains of the South shall teem with the children of a government modelled upon our own, to be hailed as the parent republic, to whom, under Providence, they will be indebted for their dearest privileges! The imagination cannot conceive a situation more desirable, an undertaking more worthy of a free and en-

lightened nation. You will pardon me, fellow-citizens, if upon a theme like this I should appear to have followed the suggestions of the heart rather than the maxims of a cold policy. Some scope must, however, be allowed for generous and disinterested actions, as well in the intercourse of nations as between man and man. But upon this subject we have every reason to rely upon the justice and generosity of our present Chief Magistrate, and we doubt not that erelong the independence of one or more of the patriot powers will be recognized.

But I fear I have exhausted your patience, and I will detain you but a moment longer. It is with a view to add my sincere and ardent wish that the return of this day, through ages yet to come, may find our country in the enjoyment of the blessings of liberty and independence; her shores unpolluted with the footsteps of an invading foe; her inhabitants uncorrupted by luxury, undivided by faction; her dominions the habitations of plenty and the residence of peace. While the nations of Europe are contending for an extension of their boundaries, and bathing their plains in blood to satiate the rapacity and gratify the ambition of their monarchs, grant, O God! that our country may ever be the resting-place for the weary dove of the Angel of Peace! May the United States be the political Mount of Ararat, where the tempest-beaten ark of liberty shall touch and find a resting-place—an asylum for the wretched victim of tyranny, a safe resort for the martyrs of liberty throughout the globe. To make it such, fellow-citizens, depends much upon ourselves. While we preserve pure and uncontaminated the principles which warmed the breasts of the heroes of '76, while we admire their virtues and imitate their example, the return of this day will ever find us, as we are now, a free and a happy people.

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## WILLIAM VANNERSON.

The subject of this sketch was a native of Virginia; was born and reared in the county of Amherst, but resided some time in Lynchburg, where he married Mrs. Allen, a niece of Hon. William H. Crawford, of Georgia. He removed to Mississippi

about the year 1825, and settled as a lawyer in Natchez, where he soon acquired great personal and professional popularity, and obtained a large local and circuit practice. He was several times a representative of his county in the Legislature, and in 1837 was Speaker of the House. He was also for several years on the circuit bench, and characterized his judicial career by a strictly conscientious adherence to law and justice. He afterwards located at Monticello, in Lawrence County, where he resided and practised to an extreme old age.

Mr. Vannerson was by no means a man of profound learning, either in law or any branch of erudition ; his early education was deficient, and he never acquired the habits of close and assiduous application. He was fond of society, and enjoyed its animated pleasantries too keenly to relish the anchoritic seclusion of profound legal study. Yet he was one of the most successful criminal lawyers at the Mississippi bar, and his practice on that side of the docket was large and lucrative. To this branch of the law his professional reading seems to have been chiefly directed, as it was more congenial to his taste and peculiar talents, and gave scope and occasion for the exercise of his emotional energy and the sympathetic elements of his nature.

He was remarkably expert in all the features of criminal practice, in the management of his cases, and in the examination of witnesses ; and was astute in the methods of obtaining continuances, turns, and concessions favorable to his clients. But his greatest strength lay in his art of persuasion, and his remarkable efficiency before the jury. His appeals to the bar of humanity were pathetic and winning. He possessed a depth of conviction and a capacity to feel, which spread their contagion to the minds and feelings of his hearers, and often caused tears of sympathy to trickle down the cheeks of the most hard-visaged juror. His sensibilities acted in concert with his mind ; and while the one penetrated to the depths of reason, the other stirred the soul of compassion.

As an orator Mr. Vannerson was fluent, logical, and, at times, eloquent. He had a fine command of language, an earnestness of manner, and a felicity of expression, which, united with a glowing imagination, a lively fancy, and a fine taste for imagery,

commended his arguments to close attention and favorable consideration. His self-control and placid temperament enabled him at all times to command the full exercise of his powers, and his humorous tact clothed every incident in the colors of advantage.

He was not, however, altogether free from a vein of harmless egotism. Like Mr. Sergeant Cockle, who, in consequence of his great powers of persuasion and influence over the mind of juries, proudly received the appellation at the English bar of "the Almighty of the North," Mr. Vannerson wore with distinguished approbation and complacency the *soubriquet* of "the Napoleon of the bar." But the origin of these sounding epithets was somewhat different: that of Sergeant Cockle was fastened upon him by the following circumstance: A person who was a party to an action pending in one of the assize courts of the northern circuit of England, was in consultation with his counsel, and, notwithstanding their encouraging assurances and favorable views of his case, he listened with dolorous visage, and finally exclaimed, "I am much obliged to you, gentlemen; I am much obliged to you; but it won't do—it can't do—the Almighty is against me." "Are you mad, man!" exclaimed one of his counsel; "what has the Almighty to do with your cause?" "I don't mean Almighty God, sir," replied the client, "I mean Sergeant Cockle—he's o' t'other side." But the authority by which Mr. Vannerson held his title must be interpreted by the pride which he reposed in the claim.

It is said that on one occasion he entered the court-room where a case was awaiting his participation, and handed the opposite counsel a note stating that the "Napoleon of the bar" had arrived, but regretted to find that he was to meet a Wellington. To which the gentleman replied that there was no danger that a Blucher would come upon the field with his fierce Prussians and turn the scale of the conflict.

Mr. Vannerson possessed great physical vigor and animation of spirits. Full of life and vivacity, it was with difficulty that he could preserve at all times, while on the bench, the dignity of a judge, and often manifested a pending conflict between the gravity of his position and a penchant to thrust good-natured

ridicule at some luckless pleader or verdant witness. He was the soul of wit, and perhaps the most confirmed humorist that ever appeared at the Mississippi bar. But his ridicule and sarcasm, though pungent and scathing in the highest degree, were, nevertheless, always cast in the mould of good-nature. His fondness for jest was ever on the alert, and he never lost a suitable opportunity for its exercise. The following letter gives a spontaneous indication of his humor and amiability; and by which it will be seen that the distinguished gentleman to whom it is addressed, and who kindly presented it to the writer, once contemplated an undertaking similar to that upon which the latter is now engaged.

"——, 2d April, 1857.

"Hon. J. F. H. Claiborne.

"My dear Sir: Your welcome favor of date 6th February last came to hand on the 10th of same month, and strange it is indeed, and contrary to my usual habits, that I have suffered it to remain so long without giving back an acknowledgment of its reception. This is partly owing to the fact that I have been much from home this spring, as our circuits commence earlier than formerly, under the late arrangements; and partly because your proposition in some degree staggered my resolution, and put to task in some measure my notions of prudence.

"I know, my dear sir, that you can do full justice in any biographical sketch you may undertake, or fully illustrate and beautify any incident of which you may be furnished the proper data; but I have doubted the propriety of giving to the public much of the incidents of my humble career, for the reason that there are so many persons still living who have felt my steel. The truth is, my victims don't die off fast enough for the growth of my fame in a particular line; I am therefore at a loss to know how I may gratify your wish in regard to the matter. I can scarcely call to mind a single man whom I have wounded in some sortie or conflict of words, who is not still living: instance our old friend Gains—he has suffered dreadfully in many a Vannersonian campaign, and always bringing his disasters upon himself. Judge Stone has suffered great havoc—all of the Natchez bar, present and past. John B. Nevit, the Prince of Democracy; many of the merchants still living at Natchez; Lamkin, of Holmesville, can tell you of some of my merciless thumps on poor Stone. I have sometimes had the crowd of the court-room jumping at Stone's expense.

"Beppo calls me the *Nestor* of the bar; if I am not mistaken, perhaps it is the *Clarion*. My cognomen about here is

'the Napoleon of the bar.' I like that better, if one can like any misnomer.

"About two years ago, Livingston, of New York, wrote to me for a full sketch of my biography, for his intended work on living lawyers of eminence. Judge Harris communicated to me, somewhat *inter nos*, that Cassidy, of Meadville, was at that time very anxious to become the biographer for the occasion; but it was not undertaken by him. I did not yield to the suggestion, partly because I thought Livingston's book would prove to be a failure as to popularity, as it has turned out; and partly because his charge for inserting the sketches was too highly extravagant for my purse. The cause of the failure of the work was that so many of the small minnows of the deep law got into it by paying; that if a whale chanced to get in among them he showed to a disadvantage; instead of magnifying the minnows, so that they could appear of respectable dimensions in such company, the work had the effect of reducing the whale to their own size. So, my dear sir, if my biography is ever written, I trust that I shall not be placed alongside of such company as Mr. Livingston proposed to pick out for me.

"There is a peculiarity in relation to myself that I pray you take the stating of as true—to wit: the almost total absence of any recollection of the things I may say or have said; hence it is apparent that none of my hits are ever given in anger, otherwise I should remember them. There are exceptions to this characteristic trait, but they are few. I am often reminded of having thrown a demolishing missile, and then remember it; but to give in detail anything of what I have said is almost impossible. I remember well the jolly time in the city, which Beppo called from the grave of long years' slumber; and so I can recall anything I may have said when reminded of it.

"But there is yet hope for you: we have mutual acquaintances, any or all of whom can give you more of the incidents in my career than myself—Colonel O. J. E. Stuart, formerly of Meadville, now of Holmesville; Hiram Cassidy, Esq., of Meadville; Hon. W. P. Harris, of Jackson; E. G. Peyton, Esq., Gallatin; E. Safford, Esq., of Liberty, Amite County. These are all literary men capable of appreciating anything that is rich or spicy. I don't think Peyton will do much for the subject, however; he has often been a victim himself, though he always enjoys a tilt I make at others. Safford and Stuart you will find interesting correspondents. Judge Posey, of Woodville, could no doubt help you out some if he would. Hurst also, of Liberty; but he hates the toil of writing so much that he would most probably decline. Sam A. Mathews, of Holmesville, is a sheer good fellow, loves wit and possesses it; he could give you a good page of me. I made a speech in Holmesville last month (March), in defending a lady for cow-

hiding a merchant in his own store for insulting language ; Sam Mathews said that speech and some of the incidents he was determined to publish. They said that when I was about to close my speech, some of the crowd in the court-room cried out, 'Go on, go on!' a thing you know to be very unusual in a court-room. I have not seen any publication of the speech yet.

"My dear Claiborne, this is a strange place I am in ; the people here are all sedate, sorrowful, and gloomy ; they cannot appreciate anything. The crack of witticism in this town is never noticed ; it is like speaking in an unknown tongue ; it falls like coin dropped into the sea, and is never heard of any more. Prentiss himself would fail here in his best humor ; the people don't know it ; they can't *take*, as the saying is. Jersey Burnes would fail too. I hardly ever get a chance here to practice any at my cheerful sport. I hate myself sometimes when I find I am getting to be so much of a matter-of-fact man. In this town 'genius sickens, and fancy dies ;' but I cannot leave it ; am comfortably situated with a most happy little home, a bountiful supply of everything, and a most lovely residence.

"I almost, nevertheless, envy your own sweetly secluded home, away out, as it is, from the noise of the heartless world, where everything is enjoyed that can make life glorious, and where nothing but the 'echo' of others' ills can reach you. May it always be so. God bless you ; being so happy as you are, you ought to think of prolonging that happiness in another life, where no echo of distress can ever come.

"Truly yours, VANNERSON."

But while Mr. Vannerson claimed to be in oratory "the Napoleon of the bar," he was certainly in his latter days its Nestor in respect to age. It is said that at the time of his death, in 1874, he claimed to be more than a hundred years old ; and at this remarkable age, the old hero went down upon that Waterloo field whose fiat no Napoleon could resist.

He left no family, but left a name full worthy of a place where the *whale* cannot be *reduced* in *magnifying minnows*.

## SPENCE M. GRAYSON.

Spence Monroe Grayson was born in Prince William County, Virginia, in the year 1803. His early educational advantages were but ordinary, and on the death of his father the burden of his family devolved upon Spence, who was his oldest son. He continued to labor for its support until assisted by his uncle, Beverly R. Grayson, a planter residing near Natchez, Mississippi, who took the young man under his care and placed him at school at Jefferson College, in the village of Washington, near Natchez ; and as soon as he was sufficiently advanced directed him to the study of law in the office of Thomas B. Reed, then a lawyer of large practice in Natchez.

In 1825 or 1826 he received his license, and entered upon the practice of his profession, in which he rose rapidly. In 1830 he married Miss Sarah R. Chew, only daughter of William L. Chew, a wealthy planter of the vicinity, and in 1835 removed to Yazoo County, where he purchased a large plantation near Benton, then the county-seat, and in 1838 represented Yazoo County in the State Senate.

Mr. Grayson attained great distinction in his profession, and stood in the front rank of the Natchez bar, at a time when it glittered with the coruscations of the highest order of learning and genius. He was a lawyer of fine judgment and skill, devoted to his profession, and assiduous in his application. He was consequently a successful lawyer, and engaged a large and lucrative practice. He was by no means gifted with the powers of oratory ; but he possessed that which, in a lawyer, is far better : he possessed depth of legal knowledge, strong logical powers, and was forcible, lucid, and convincing in argument.

He was exceedingly kind and courteous in his manners, and few men cherished more than he the elegance and charm of social life. But while he was popular in society, naturally quick of perception, and penetrating in judgment, his professional eminence was due mainly to his perseverance and unwearied application to the details of his profession. He died in Yazoo in the summer of 1839.

## ALEXANDER G. McNUTT.

Alexander G. McNutt was born and reared in the State of Virginia. His early educational advantages were, in consequence of the poverty of his parents, very limited, and he was at an early age consigned to his own resources; but buoyed by an ambition to achieve an honorable place among men, and seeking a more propitious field for the strife, he emigrated, in 1822, to Mississippi and settled in Vicksburg, where he began the practice of law, and soon attained distinction at the bar. Poor, friendless, and destitute of all resources save those with which nature had endowed him—a sound head, an honest heart, and high resolves—he came to this hospitable State, and by his industry, sterling honesty, and the vigorous exertions of a strong and practical mind, rose, first to a high rank in his profession, and then to the highest office in the gift of the people of his adopted State. He was for several years a member of the Legislature; in 1837 he was Speaker of the Senate, and in 1838 was chosen Governor of Mississippi, to which office he was re-elected.

While in the Legislature, Mr. McNutt distinguished himself by his powerful and successful exertions to secure to the new counties formed out of the Chickasaw and Choctaw cessions the exercise of the right of representation, which, on account of the motley and incongruous elements of their constituencies, was for some time vehemently opposed by the older and more stably settled counties of the State. This action greatly endeared him to the people of the new counties, and in his canvass for Governor they supported him with unanimity and zeal; but by this course he created enemies in other parts of the State, who assailed him with much virulence, among whom was the distinguished Sergeant S. Prentiss.

But it has been truly said that there are times when even the virtues of a man provoke hostility: as Tacitus has expressed it, "*Nec minus periculum ex magna favia quam ex mala;*" and, though bitterly assailed, he did not swerve in the advocacy of his principles to conciliate his enemies or to soften opposition; but with a conscious rectitude, based upon principle, not policy,

he boldly proclaimed his views and fearlessly practised his precepts.

Governor McNutt was uncompromising in his opposition to all monopolies, and fiercely antagonized the loose system of banking at that time tolerated by the laws of Mississippi; and he predicted, as with the tongue of prophecy, the bankruptcy and ruin that would inevitably follow the pledging of the credit of the State in maintenance of such institutions. In his first message to the Legislature in 1838 he said:

"Unless corporations are so modified as to subserve the public good, they are contrary to the genius of republican government; monopolies never can be tolerated by a free people." And he advised the Legislature to tax the stock of all banks and other corporations in the State, those excepted which were compelled to construct railroads. In his message of January, 1840, Governor McNutt pointed out with great force the abuses of the whole banking system of the State, and recommended the repeal of all bank charters. In this connection he said:

"The exercise of the repealing power is not in its nature judicial. The same power that grants charters is competent to repeal them. Public policy and convenience authorize their creation, and if experience proves them to be detrimental we are required to recall the privileges granted."

This was another ground for the most virulent assaults on the part of those who maintained the interest of the banks and advocated optional issues and unlimited circulation.

Governor McNutt was a Democrat of the Jeffersonian school: open, firm, and honest in his convictions, he boldly flung the banner of his principles to the public view. Indeed, it may be said that his election as Governor in 1838 was the first but lasting triumph in Mississippi of those pure principles of democracy, which have become so deeply imbedded in the political and civil fabric of the State. He was emphatically a man of the people. He knew what was conducive to their prosperity. The fortunes of the State were grafted in the depths of his heart, and no influence could induce him to swerve from the path of true patriotism. Plain and unassuming, he was great within

himself, "smiled superior to mere external show," and bore his talents and honors with modesty.

As a lawyer he was sagacious and true. While he never contracted those habits requisite for the acquirement of profundity in that fathomless science, he was thoroughly familiar with the great principles of law, and was always master of that which was applicable to his cases. This his sound judgment and intellectual energy enabled him at all times to convoke and apply with unerring precision and discrimination, and consequently he was always equal to any emergency that might arise in the management of a cause, which he often gained in the face of apparently insurmountable difficulties, and in defiance of all forensic ostentation. His oratory was plain, logical, and entertaining, and as a speaker he was a great favorite with the people. He acquired a large fortune by his practice, and by his sterling qualities and great services achieved a name that will forever shine in the annals of Mississippi. He died in the year 1848.

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## WALTER LEAKE.

Walter Leake was, I believe, a native of Virginia ; but I have not been able to ascertain anything as to his origin or early advantages. He made his advent into the Mississippi Territory at an early period, and in 1817 was chosen one of the first Senators in Congress from the new State. This position he held with distinguished ability and fidelity until the year 1820.

At the expiration of his term in the United States Senate, he was appointed a judge of the Circuit Court, in which position his career was marked by a thorough exposition of the law and a strict adherence to the principles of justice.

He presided in the Circuit Court until 1822, when he was elected to succeed Mr. Poindexter as Governor of Mississippi.

While Governor his messages were replete with sentiments of pure patriotism and with sound advice. He was a strenuous advocate of every measure that tended to elevate the masses of the people, and to nourish the spirit of independence and State pride.

His knowledge of law, together with his keen and discerning judgment, enabled him to detect and suggest a remedy for many abuses in our system of judicature. In his message to the Legislature in 1825, he deprecated the practice of permitting the presence of young and unskilled district-attorneys in the grand jury rooms, where from ignorance or design they might, and no doubt often did, mislead the juries as to the law. He thought that the grand jurors should be chosen from the most intelligent and upright citizens, and should receive their instructions and advice directly from the judges, without being in any wise subjected to the influence of the district-attorneys.

At the expiration of his gubernatorial term, in 1826, Governor Leake resumed the practice of his profession. He was an erudite lawyer, and a man of stanch integrity; and if a sound judgment and a deep sense of patriotism characterized his public career, his professional was no less distinguished for the honor, industry, and ability, by which it was illuminated; while his private character was adorned with graces and virtues which rendered him a favorite of society, and a true type of the Southern gentleman. Governor Leake was a warm advocate of the cause of education. In one of his messages to the Legislature he said: "While we contemplate the condition of the different nations of the earth, it is a source of the highest gratification, and ought to excite our deepest gratitude to the Author of our being, that our lots have been cast in a land of freedom, where civil and religious liberty are fully enjoyed, and the rights of the people rest on a basis which can alone be shaken by their own agency. The people, being possessed of the physical power of the State, and all authority exercised by their public functionaries emanating from them, will maintain and protect their rights, so long as they possess that portion of intelligence which will enable them to know and understand those rights.

"How important, then, is it that every avenue of information should be kept open to them; that a general diffusion of knowledge should be encouraged by promoting and aiding the means of education throughout our State.

"Without knowledge, republican virtue must dwindle to a

shadow, and the people, in ignorance of their rights and privileges, will easily be made instruments by artful and designing men for the destruction of their liberties."

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## EUGENE MAGEE.

The subject of this sketch was born in Ireland, and had there received an excellent education in the best schools of the Jesuits, preparatory, it is said, for holy orders in the Catholic Church.

It is not known at what time Mr. Magee came to this country. In 1830 he was a law partner of Judge George Coalter, in Vicksburg, where he enjoyed a fine practice, and in 1835 represented the counties of Warren and Washington in the State Senate.

Mr. Magee was a man of powerful native intellect as well as of extensive literary acquirements; was well read in his profession, and possessed in a high degree that vivacity of intellect and store of humor so characteristic of an educated man of his nativity and race. His vehemence in debate, his aggressive zeal, caustic but good-humored wit, combined with no ordinary degree of eloquence, soon gained for him great popularity and success at the bar. He possessed a vigor and winning manner that threw a halo of interest around his subject, and readily enlisted sympathy in his cause. This done, it was not difficult for him to gain the favor of prejudice, if not the conviction of judgment. He had, no doubt, studied thoroughly the intricate system of common-law pleading, and was remarkably acute and accurate in the preparation of his cases, and in the discussion of all questions arising from the pleadings. He was a man of a kind and generous heart, and his varied accomplishments rendered him a favorite in society. He lived but a few years after his appearance at the bar of Mississippi, and died of a pulmonary affection which had for some time rendered his health delicate. Mr. Magee was in many respects a man of note, and it is to be regretted that so little is known of his history.

## EDWARD C. WILKINSON.

The subject of this sketch was a native of Virginia, and emigrated to Mississippi in the year 1830. Judge Wilkinson descended from a good family, and was thoroughly educated before he entered the arena of the forum. Arriving first at Natchez, then the Athens of Mississippi intelligence, and long the seat of her legal renown, he found there no opening suitable to his aspirations; hence, after also inspecting the prospects for a young lawyer in the city of Vicksburg, he visited Yazoo City, where he finally located and began the practice of his profession, in which he rapidly rose to distinction and eminence; indeed, so brilliant was his career and so highly esteemed were his abilities and virtues, that in 1833, but three years after his advent to Yazoo, he was chosen a judge of the Circuit Court of that district.

The career of Judge Wilkinson upon the bench was characterized by a high degree of ability and an untarnished integrity and uprightness. He was the soul of honor and refined sentiment, to which was added the sanctifying influence of piety. Yet he was a man of a naturally impetuous and fiery temperament, and predisposed to the influence of present impulse. It was owing much to a momentary uncontrollable impulsion of this quality that he was precipitated into an unfortunate affray at a hotel in Louisville, in which it became necessary, in defending himself and brother, to slay one of his antagonists, and for which he was tried for murder before a Kentucky jury.

The affair occurred under the most trying and peculiar circumstances. Judge Wilkinson was in Louisville for the purpose of marrying a beautiful and accomplished young lady in that city. The marriage feast was prepared, and all things in readiness for the happy consummation, which was to have occurred on the next evening, when the demon of fate rolled his stone in the pathway of golden bliss.

On the night prior to that fixed for the wedding, Judge Wilkinson accompanied his brother to the establishment of a tailor, from whom the latter had ordered a suit of clothes; and the fit of the garments being bad, sharp words and finally blows were

passed between the parties. The tailor, collecting his friends, followed them to their hotel, and a violent assault was made on Judge Wilkinson and his two companions as they descended from their rooms to the supper-table. The result was the death of two of the assailants.

It was on the occasion of this trial that Sergeant S. Prentiss made one of his most powerful speeches in the defence. The particulars of this trial will be found in the sketch of Mr. Prentiss, to which the reader is referred. Judge Wilkinson and his friends were honorably acquitted, upon the ground of self-defence, which was their only plea.

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## BUCKNER C. HARRIS.

Buckner C. Harris was a native of the State of Georgia, and belonged to a family of high social standing and intellectual repute. After receiving a thorough education and the usual training for the profession of law, he removed to the State of Mississippi, about the year 1830, and settled in the county of Copiah. Here he soon acquired distinction in his profession, and in 1833 was chosen to represent the counties of Copiah and Jefferson in the State Senate, in which by his energy and ability he attained a position of eminence and influence. He was an active participant in all proceedings of an important or general nature transacted in the Senate during his connection with that body, and it was there that his character and abilities were first fully displayed to the view of the public; and from that time so rapid was his progress in the path of professional eminence that in 1837 he was elected judge of the Circuit Court.

The career of Judge Harris, during the short time that he remained upon the bench, was characterized by a display of the most eminent qualifications, and an exhibition of all those noble traits of character which constitute the mantle of juridical renown.

He was learned in all the branches of the law, familiar with the settled principles of right, and administered justice with a stern and inflexible hand, in which he was prompted not only

by a penetrating perception and sound judgment, but also by a sensitive conscience and a controlling love of equity. He possessed in an eminent degree the respect and confidence of both the bar and the people, hence his rulings and decisions were generally received with confiding satisfaction.

Judge Harris was unquestionably a man of unswerving honor and refined sensibilities. His kindness and amiability were equally conspicuous with his integrity on the bench and his sense of duty at the bar, and there is no telling what might have been the measure of his professional achievements had he remained in the field where his character had already assigned an unbounded scope to his fame and usefulness. At the expiration of his term of office as circuit judge, in 1841, Judge Harris retired from the bench and resumed his practice at the bar, and soon after the annexation of Texas to the United States he removed to that State, where he resided until the time of his death.

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## JOHN T. McMURRAN.

The subject of this sketch was a native of Pennsylvania. After having received a good education he was sent to Chillicothe, Ohio, where he read law in the office of his uncle, Judge Thompson, who then represented that district in Congress. Here he was thoroughly trained for the profession of law, and having obtained license to practise he came to Natchez, Mississippi, about the year 1828, bearing a letter of introduction from his uncle to General John A. Quitman, who had resided a short while at Delaware, Ohio, prior to his advent to Mississippi, but was now a member of the distinguished firm of Griffith & Quitman, in Natchez, the most successful firm at that time in the State. In consequence of his letter of introduction, Mr. McMurran was engaged in the office of these gentlemen as a clerk, in which position the extensive business of the firm afforded him an ample opportunity for perfecting his knowledge of law, and for familiarizing himself with all the details of practice. Of this advantage he availed himself to such a degree that, upon the death of Mr. Griffith from yellow fever in

1829, he became the partner of General Quitman. The career of the new firm was successful in the highest degree, and Mr. McMurran soon gained the ascendency of even his distinguished partner, and took his position in the very front rank of the profession.

Mr. McMurran possessed a vigor, perseverance, and inquisitiveness of mind which permitted nothing to pass from under his observation without his thorough comprehension of its character and import; and to these trained habits of sensation and perception was added a cultured and well-regulated judgment. While such qualities assert their superiority in whatever sphere they may be exercised, the capacity of minute and accurate attention is of all others the most important qualification for success at the bar, and when it is nurtured and moulded into professional habit, it is to genius a sure passport to the sphere of eminence.

Mr. McMurran's knowledge of the law was profound and exact. He was methodical and laborious in the preparation of his cases, and always well armed with precedent and authority. While his oratory was void of ornamentation, it was forcible, logical, and laden with argument. He readily perceived the main points of a question, and addressed himself to the gist of the controversy—a rule which commends itself both from its utility and the sound sense by which it is dictated, and which, if more universally observed, would greatly redound to the expedition of the courts and the attainment of justice, while it would often relieve a heavy burden from the patience of both judge and jury.

As a man, Mr. McMurran was mild, amiable, and conciliatory, and possessed a fund of quiet humor and anecdote, which rendered him highly interesting and pleasing to juries, and a most agreeable companion in social intercourse.

His wife was the daughter of Chief Justice Turner, a lady whose accomplishments were in every way worthy of the character of her husband, and who, no doubt, afforded him that encouragement, in his struggle with his extensive practice, which only the smile of loveliness can inspire.

While Mr. McMurran was a stranger to the sway of prejudice

and passion, he was yet a man of strong convictions, firm in his embrace of principle, and open and candid in the expression of his opinion. But the law was his chosen sphere, and to that he devoted all the energies of his character. He seems to have manifested but little ambition for political preferment—a field in which his marked executive abilities would have, doubtlessly, achieved an eminence fully commensurate with that he enjoyed at the bar, where his career was a model of successful, intelligent labor, and an exemplary exhibition of the shining virtues of industry, integrity, and truth.

His death was the occasion of general regret, and his loss, notwithstanding the exclusive privacy of his life, was viewed as a public calamity.

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## SAMUEL S. BOYD.

Mr. Boyd was a native of Maine, had enjoyed ample advantages in early life, and was said to have been the best educated lawyer that ever appeared at the Natchez bar. His scholarly attainments were united with great intellectual vigor, unwearied application, and a sparkling vivacity of comprehension. He made his appearance in Mississippi about the year 1830, formed a copartnership in law with Judge Alexander Montgomery, and in a few years was found in the front rank of the bar of the State.

As a lawyer he was profound and sagacious, with an alertness and penetration that knew no surprise, and which baffled every effort of undue advantage. His knowledge was as vast as the range of thought and the bounds of jurisprudence, while his judgment was commended by an accurate perception and ready comprehension of the analogies and relations of facts.

In 1837 he was one of the special judges appointed to try the case of Vick *et al. vs.* the Mayor and Aldermen of Vicksburg, in the High Court of Errors and Appeals, and delivered the opinion of the court. This opinion is able and eloquent, and, in view of the novel features of the cause, is enunciated with remarkable clearness and vigor. It evinces a perfect familiarity with the subtle and unsettled questions of law involved, and the

conclusion is reached by an irresistible train of syllogistic reasoning ; but upon a different estimate of facts it was reversed by the Supreme Court of the United States.

His brilliant command of language gathered the most elegant and forcible phrases for the enunciation of his views. Full of pathos and sentimentality, whatever opinion he adopted, or principle he espoused, was grafted in his belief, and his zeal was warm with the ardent glow of conviction. This vehement and emotional earnestness of manner gave great weight to his utterances, and commended his views to the conviction of others.

Prodigal with learning and research, his style of oratory was incisive, cogent, and demonstrative, while his illustrations were apt, energetic, and lucid. Possessed of every acquired qualification, he was only deficient in that "divine afflatus" which alone can give model to the perfect orator.

In social life Mr. Boyd was bland, polished, and refined, and was a favorite in society. He married the daughter of James C. Wilkins, Esq., the pioneer cotton merchant of Natchez, and one of its most eminent citizens. But, while surrounded with accumulated wealth, standing face to face with every prospect of greatness and every promise of happiness, Mr. Boyd, like many of our most eminent men, died in the prime of life, on the threshold of his honors, and in the full-blown flower of his genius. He was truly a man of eminent merit, and his name is entitled to a bright place in the annals of our bar, where monuments of true worth are built only of hearts, and the memory of greatness lives in the veneration of the great. *Ibi emicat in æternum.*

## SAMUEL P. MARSH.

Samuel P. Marsh was born in South Carolina, and educated at the university of that State. He was the son of a Baptist preacher who emigrated to Mississippi and settled in the county of Amite, where the subject of this sketch began his career. Mr. Marsh was considered a superior lawyer, and achieved great success at the bar. He was deeply read in his profession, and indefatigable in the preparation of his cases. He often appeared before the Supreme Court of the State, and his briefs and arguments evince much learning and research. He was evidently a lawyer of vast resources, possessed of keen perception and logical powers of a superior order. His familiarity with reported decisions was amply verified, and he invoked them with much aptitude and force.

He was a stanch Carolinian in politics, and entertained the extreme tenets of that school; but his devotion to the duties of his profession precluded him from active participation in the political contests of the period, and the only record of his ability is the eminence which he achieved at the bar—a characteristic which would present a wholesome example to those lawyers who dissipate their talents and achieve no eminence at all. While Sir Edward Coke boasted that his Institutes contained three hundred quotations from Virgil, their frequent inapplicability evinces the weakness of his literary vanity; and, while it is true that "A lawyer," as he says, "professeth true philosophy, and therefore should not be ignorant of either beasts, birds, creeping things, nor of the trees, from the cedar of Lebanon to the hyssop that springeth out of the wall," yet the proverb that "Lady Common Law must lie alone" will not permit it to be wedded with impunity to the absorbing abstractions of politics. While the law is the best and even necessary school for the politician, yet he must bid adieu to the forum when he enters upon the hustings.

Mr. Marsh died in the meridian of his manhood and forensic success, and the monotony of his professional life was justified by his professional eminence.

## JOHN HENDERSON.

The subject of this sketch was a native of the North, but emigrated to Mississippi when quite a young man, and located as a lawyer at Woodville, in Wilkinson County, about the year 1820. He soon achieved by his application a professional standing, while his integrity and genial deportment gained for him great personal popularity. In 1835 he represented the county of Wilkinson in the State Senate, and was the author of the resolutions impeaching the validity of the Legislature in consequence of the admission of members from the counties newly formed out of the Indian cession.

He early became associated in political measures with General John A. Quitman, and supported the political principles of John Quincy Adams in opposition to those of General Andrew Jackson; but finally drifted, in company with his friend, into sympathy with the views of Mr. Calhoun, and became a stanch advocate of the doctrine of State Sovereignty.

While thus entertaining, in part, the principles of both political parties, he was elected, in 1849, by the Legislature of Mississippi, to a full term in the United States Senate. In this body he was considered an able debater and a strong supporter of the rights of the States. His career rendered him popular with the Democratic party, and on his return to Mississippi, at the expiration of his term, he aligned himself with the politicians of the extreme Southern school of that period. He was warmly in favor of the annexation of Texas, and the conquest of Cuba and Mexico, and was closely connected with General Quitman in his views and schemes looking to these enterprises.

In February, 1851, he was arrested, together with General Quitman, and put upon his trial before the United States District Court at New Orleans, for violating the neutrality laws of 1818, by his complicity with the Lopez expedition against the island of Cuba, but was acquitted of the charge, and died soon after the tragic failure of that enterprise.

Mr. Henderson was by no means a man of extensive literary attainments or of finished education, nor was his oratory modelled after the style of Cicero. But he was an able lawyer; he

had thoroughly digested the great masters of the common law. His learning was deeply grounded in fundamental principles, which his astute discernment, sound judgment, and vigorous application rendered remarkably effectual in achieving success. The great secrets of his professional eminence were an overweening self-confidence and indomitable pertinacity. He was never prepared to accept defeat, and clung to a case as long as there was a suspended thread of possibility. Consequently he was at all times a formidable antagonist, both in the forum and on the hustings.

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## RICHARD H. WEBBER.

Richard H. Webber, a native of Kentucky, was a person of limited education. It seems that he had never devoted himself to the acquisition of a knowledge of any branch of erudition extraneous to his profession, but to this he had applied himself assiduously; and while he was devoid, to a great extent, of that seemliness of bearing and polish of manners bestowed by general culture, there were few lawyers of his time at the Mississippi bar who could exert a more powerful influence by the mere force of argument. He was a profound lawyer and a skilful logician, and brought to bear upon his cases a depth of research, a breadth of comprehension, and compactness of reason, which were often no less surprising than effectual.

But while he confined his studious thoughts and investigational labors exclusively to the law, he was by no means reclusive in his habits. He was fond of society and conversation, and his genial disposition rendered him popular with the people and a favorite at the bar. He settled in the piney woods district of Mississippi about the year 1825, and soon acquired a large practice throughout the counties of that section. His ungainly figure and uncomely manners, which bordered upon the ludicrous, so far from exerting a repellent influence, were rather an element of popularity with the rude clients who at that day besieged the courts in those piney settlements. Like the English advocate Dunning, Mr. Webber was an instance of the triumph of genius over physical defects. The ardent congeniality of his disposi-

tion led him to an excessive participation in scenes of revelry, and sometimes in painful debauchery. Yet, such was the strength of his mental organization that, so long as his physical powers sustained the combat with his excesses, his mind retained its balance and in a great measure its brilliancy. An amusing circumstance of this feature of his character is related.

Mr. Webber had a case in court which hung upon a demurrer, and, though deeply in his cups, awaited its call with the serenity and alertness of the most sober anxiety ; but when the case was taken up, the opposing counsel, whose copious potations had disarmed his mental faculties, arose, and in piteous strains alleged his indisposition and beseeched the court for a continuance. Mr. Webber, aware of his advantage, and eager for the forensic contest, objected to the postponement, and stated to the court that, while he respected the infirmities of his brother, yet he himself was in the same identical predicament, and that there was no telling when either of them would be in any better health. The court, comprehending the situation and relishing the amusement of the occasion, ordered the counsel to proceed with their arguments ; and in consequence of the peculiarity of his temperament, Mr. Webber, though he could scarcely maintain a respectable physical attitude and was at a disadvantage as to the merits of his case, gained an easy victory over his more besotted adversary.

But in spite of the depth and strength of his judgment, the astuteness and tenacity of his logical powers, and the command which he possessed over his intellectual resources, the faculties of Mr. Webber, both mental and physical, were greatly enfeebled by this bane of the legal profession, and enemy of all intellectual excellence, and while his usefulness was impaired, the number of his days was no doubt curtailed by his unfortunate excesses.

# CHAPTER V.

## CHANCERY.

THE BENCH—CHANCELLORS AND VICE-CHANCELLORS—1821–1857—JOHN A. QUITMAN—ROBERT H. BUCKNER — STEPHEN COCKE — CHARLES SCOTT—JOSEPH W. CHALMERS—JAMES M. SMILEY.

In 1821, as already stated, the Legislature of Mississippi, upon the recommendation of Governor Poindexter, severed the common law and equity jurisprudence, and established a separate court of chancery for the State. The complex system which had hitherto existed amounted almost to a denial of justice in equitable cases, and was subversive of that uniformity and consistency which should characterize the decisions of all courts of justice, and upon which hinge the rights of property and the safety of the citizen. It was found that after weeks of intense contemplation of the fixed rules and settled maxims of the common law, the most learned and experienced judges found it difficult, on opening the chancery side of the docket, to transfer an untrammeled judgment to the clear and open field of equity. It was difficult for them to suddenly and temporarily thrust their minds beyond the bar of the letter of the law into the true province of equity, which embraces its reason and spirit, and extends beyond its reach.

While it might be practicable and feasible to maintain a combination of equitable jurisprudence with that of the civil law which requires every case to be referred back to fundamental principles, and which is really the essence and source of equity jurisprudence, its mission is too incompatible with that *strictum jus* which constitutes the body and pith of the common law to be domiciled with it in one and the same jurisprudence. While it is true that, under our system, equity follows the analogy of

the law, if there be an analogy, yet its broad and copious principles declined to be harnessed harmoniously with technicalities or restrained by arbitrary limits.

The act of 1821, establishing a separate and distinct system of equity jurisprudence in Mississippi, rescued the noble science from that crude and confused administration upon principles of imaginary conscience and supposed right to which it had been subjected while held subsidiary to the principles and practice of the common law. And since its elevation to its true position as a supervisor of law as well as an adjunct, it has bounded beyond the mere visionary views of abstract justice, and, no longer subordinated to the peculiar condition of the conscience of the presiding judge, has leaped upon a platform of fixed principles and established rules which have been gathered from the garnered wisdom and experience of mankind.

In no other State, perhaps, has the system of chancery jurisprudence been developed, in the same length of time, to a higher or more felicitous degree than in Mississippi. The distinguished gentlemen who have occupied that bench, have elaborated, both by precedent and principle, every species and manner of relief that justice can demand or wrong and injury provoke within its sphere. They have prescribed a parry for the *vis major* of every untoward event and legal accident, and placed the victims of misfortune in the arms of redress. They have afforded a mantle for the brow of error and a shield for the unwary against the artifice of the cunning. They have uncloaked the hidden transactions of fraud, both actual and constructive, and vitiated every manœuvre of falsehood and deceit. Indeed, they have caused the administration of our courts of equity to shed a benign and hallowed influence on every feature of society and upon all the multiplied concerns of life. Two of these gentlemen, Hon. J. G. Clarke and Hon. Edward Turner, having been judges also of the Supreme Court, have already been mentioned in connection with that bench.

## JOHN ANTHONY QUITMAN.

In attempting a sketch of the life of this distinguished gentleman, I shall not endeavor to follow him through the war of Texan independence and the Mexican war. In these his career forms one of the brightest pages in the history of the United States. It records his glowing patriotism, fiery valor, and unconquerable bravery, which form a part of our national pride and national glory.

His name is immortally linked with the glory of Monterey, Chepultepec, Contreras, Puebla, and other memorable fields of the Mexican war, from all of which he emerged with his colors sparkling with glory, and with victory perched upon his standard.

His was the first American flag that floated over the Mexican capital, and he was the first civil and military governor of Mexico—the only American who ever ruled in the ancient halls of the Montezumas.

His biography has been written in two volumes by the Hon. J. H. F. Claiborne, which, though I have not had the pleasure of seeing it, from my knowledge of the ability and eloquence of the distinguished author, I cheerfully recommend to the reader.

The following sketch of the life of General Quitman will be confined to his career as a citizen and member of the Bench and Bar of Mississippi. The facts have been culled chiefly from sketches published in 1848, during the life of General Quitman, by Ritchie and Heiss, and from the records of the period, which constitute an accurate synopsis of his professional and judicial career :

The grandfather of General Quitman is said to have held an important and responsible office under the great Frederick of Prussia, and is understood to have enjoyed the personal regard and confidence of that monarch. His father was also a native of Prussia, and was educated at the celebrated University of Halle, where he graduated with the highest honors of his class.

The liberal principles and free sentiments common to that and other German universities were freely imbibed by the young student, and doubtless determined his settlement in America,

the theatre upon which was to be solved the interesting problem of the capacity of man for self-government.

He arrived first in the Dutch island of Curaçoa, in the West Indies, and while sojourning there married a daughter of the governor—a lady distinguished no less for her beauty and accomplishments than for her family and connections—and was accompanied by her to the United States soon after the close of the Revolution. This gentleman, the Rev. Dr. Frederick Henry Quitman, was equally distinguished for his piety and talents and for his activity and energy of character. He had the pastoral charge of the two Evangelical Lutheran churches in Rhinebeck, Dutchess County, N. Y., and was for many years president of the General Synod of that denomination in the United States. He performed these various duties with exemplary zeal and ability, and died at the advanced age of seventy-two years, universally beloved and respected by all who knew him. His family included three sons and four daughters. John Anthony Quitman, the youngest of these children, was born at Rhinebeck, on the 1st of September, 1799.

From such parents the son could but derive very great advantages in natural endowments as well as in counsel and example. A vigorous frame, a well-balanced mind, a love of truth and honorable fame, undaunted resolution and industry, marked his early years; and his subsequent career but exemplified these traits upon a wider theatre of action, and in the practical and varied duties of life, showing how truly *the boy is the father of the man.*

At the age of ten years, young Quitman was placed at school in the town of Schoharie, N. Y., and at sixteen was transferred to the celebrated institution of Hartwick, near Cooperstown, in the same State, then under charge of the reverend and learned Dr. Hazelius. During part of his time at this institution he acted in the capacity of tutor, and left it in his twentieth year, to accept a professorship in Mount Airy College, near Philadelphia, which he held for about fifteen months and until he attained his twenty-first year.

Considering the energy and vigor of his nature and the excellent opportunities he had enjoyed, it is not surprising that at

this period his attainments were of the most thorough and varied kind, or that he was held at both of these institutions in the highest estimation for his talents and acquirements.

It seems that his venerable father had contemplated his son's embracing his own profession, that of the ministry ; and that with this view, besides the usual academical course, including the classics and the French, Spanish, and German languages, his attention had been directed to the Hebrew, and to church history and biblical criticism, the knowledge of which he afterwards cherished and preserved by occasional study during the course of a busy and stirring life.

But his own predilection was early and decided for the law ; and without interfering with the course of study prescribed by his father, he had already, and merely in those hours which others might have given to amusement, qualified himself for admission to the bar.

Thus having completed, at the same time, both his education and his minority, the time had arrived for young Quitman to launch his bark upon the ocean of life. Without either wealth or potent friends, his circumstances demanded that he should be the architect of his own fortune ; and with an abiding confidence in his own energy and his own powers to compass and achieve it, he was buoyant with the hopes of the future. Having obtained the consent of his father, all that was now wanting was a suitable location for the practise of his favorite profession. This he determined should be in the far West, and, with an outfit in books and a small sum of money, he lost no time in entering upon his journey to the Ohio.

Arriving at Chambersburg, in Pennsylvania, he found but a single line of stage-coaches running to Wheeling, and, unwilling to submit to the charge, $75 (the fare of a passenger, for every fifty pounds of extra baggage), he placed his books in a transportation wagon and pursued his journey on foot. At Chillicothe, Ohio, the location he had in view, he found that a law had recently been passed requiring a residence of one year in the State before admission to the bar, and thereupon entered the law office of Messrs. Brush, eminent lawyers of that place. In the spring of 1821, Platt Brush, one of the firm, was ap-

pointed to the new land office established at Delaware, Ohio, then upon the Indian frontier. To this place young Quitman accompanied him as a clerk, and, while performing the duties of this office, acquired a knowledge of the land system of the United States which was not without its value in after years.

Having thus passed the year of residence required, partly in further preparation for practice, and partly in earning a moderate compensation for his services, he underwent a highly creditable examination before the Supreme Court of Ohio, at Delaware, and was admitted to the bar.

But the distressing condition of Ohio at this period—arising from excessive and improvident bank issues, with the consequent inflation and depreciation of the currency—produced a state of things so inauspicious to the prosperity of the community in which he lived, and to his own, that he determined to relinquish a position in other respects pleasant and encouraging, and once more to seek his fortune among strangers. He accordingly removed to the city of Natchez, in the State of Mississippi.

In Natchez, General Quitman's professional career may be said to have fairly commenced. Here he formed a copartnership with William B. Griffith, then an eminent lawyer, and by applying himself to his profession with his characteristic energy and fidelity, he soon achieved, not only a lucrative practice, but a respectable rank among the prominent members of the bar.

At this period he also took an active part in the consideration and discussion of all the important questions of the day—especially those that concerned the general or local interest of the community in which he had established himself, and bore his full share in all the measures and movements tending to improve, harmonize, and ameliorate the condition of its society. He was consequently popular in the community, particularly with the other members of the bar and the fair sex.

In 1824 he married Miss Eliza Turner, the only daughter of Henry Turner, Esq., of Virginia, and a niece of Chancellor Turner, of Mississippi.

At the general election in the State of Mississippi, held on the first Monday in August, 1827, General Quitman was elected by a very large majority to a seat in the popular branch of the

Legislature, as a representative from the county of Adams, and, as a member of the judiciary committee, soon became prominent for activity, sagacity, and ability, even among such men as afterward Chief-Justice Sharkey and Judge Pray, of whom the committee was composed.

Upon this theatre of action, his reputation for talents and business capacity rapidly expanded, and in the next year, before he had attained the age of twenty-nine, he was appointed by the Governor (the Legislature not being in session) to the distinguished and responsible office of Chancellor of the State. He held this office for the uninterrupted period of six years, and by no less than three several appointments: first by appointment of the Governor, as stated; secondly, by unanimous election of the Legislature, at its next meeting; and lastly, after the adoption of the new Constitution, which made the office elective by the people, he was elected without opposition.

His decisions as chancellor were very numerous during the period he held that office, and are universally admitted to have been distinguished for beauty of style, force of argument, and legal acumen. Embracing as they did, in the incipiency of this branch of jurisprudence in Mississippi, many novel questions, and containing sound and lucid expositions of the law applicable to them, they contributed a valuable addition to the existing authorities and precedents, and well entitled him to be regarded as the father of chancery law in this State.

While holding the office of chancellor, he was, in 1831, elected a member of the convention called to revise the Constitution of the State, and was placed at the head of the judiciary committee in that body. He was uniformly on the side of liberal principles. To enumerate the various measures introduced or advocated by him in this convention, indicative of his sound statesmanship and patriotism, would swell this sketch to a dimension incompatible with the scope and purport of this work. One, however, was too significant and important at the time to be overlooked—this was a proposition to prohibit the Legislature from borrowing money, or pledging the faith of the State, for the purpose of banking. This proposition he pressed with great zeal, and, notwithstanding much opposition, pro-

cured its adoption in a somewhat modified form as a part of the fundamental law. The provision in question will be found in Section 9, Art. VII., of the revised Constitution of 1832.

We can fully appreciate the political forecast and judgment which at that time suggested this proposition, only by reflecting through what a glittering prospect, and dazzling glare of profit and success, was the danger perceived in the distance, and how much embarrassment, not to say distress, the State would have escaped if the restriction he introduced had been fully adopted and faithfully observed. It is fortunate for Mississippi and for most, if not all, of the States, which have since revised their organic law, that this important feature of a republican Constitution, first introduced by General Quitman, stands forth as a perpetual barrier against a policy that has wrought so much mischief in our own State.

In 1834 General Quitman resigned the office of chancellor, which he had filled with so much honor to himself and with such general satisfaction to all branches of the community, for the purpose of devoting his time to his private affairs ; but he was not permitted to remain long in his retirement. In the following year he was elected as State Senator from the county of Adams. While a member of this body a vacancy occurred in the office of governor of the State, and the Senate was convened by proclamation of the acting secretary of State for the purpose of electing a president of that body, to perform under the constitution the duties of governor. The choice fell on General Quitman. He continued to hold the office of President of the Senate as long as he remained a member of that body.

The message which, as acting governor, he delivered to the Legislature at its meeting in the following January, 1836, was regarded at the time as a masterly production, and even now, no one will arise from its perusal without according to it that character. The design of this sketch being to give some idea of the turn of mind and character of General Quitman, as well as the principal events in his life, I will introduce a few paragraphs from his message, touching topics of the most general and important character.

1. On the tendency of our system to centralization.

"To those who recognize the principle that the Constitution of the United States is a solemn compact between sovereign States, and that the government created by it is an agency established to execute certain defined trust powers for the common benefit of the States, no apology need be offered for a brief allusion to our federal relations. Indeed the very idea of trust powers is necessarily associated with the superintending power of the political communities by whom they are delegated. Restrictions and limitations arose in a jealous spirit of liberty, and by jealous and unceasing vigilance alone can they be preserved. Whatever may have been the opinions of patriotic statesmen of the tendency of our complex political system at the period of its formation and adoption, the experience of nearly half a century has now shown to the satisfaction of the attentive observer of our political history that its inclination is to *centralism.*"

"Those who feared, in the structure of this noble fabric of human wisdom, that the power delegated to the different departments of the federal government would be scarcely sufficient to preserve the edifice from the assaults of State pride, State ambition, and State prejudice, regarded it with the naked vision. They did not imagine that their successors might view it through the false and magnifying medium of sophistical construction! Much less, in the golden age of patriotism which followed the chastening afflictions of the Revolutionary struggle, was it anticipated that the power, the patronage, and the fiscal means of the general government, would ever be used as the instruments to control the freedom of elections, to overawe the spirit of republican independence, and to perpetuate power in the hands of those who might wield it."

2. On education.

"I will not be deterred by the triteness of the subject from most earnestly calling your attention to the cause of education. The Constitution imposes its encouragement on us as a sacred duty. When we reflect that in our political system every freeman partakes in the administration of the government, how important is it that the means of acquiring general as well as political knowledge should be placed within the reach of every man. Upon the intelligence, the wisdom, and the virtue of

the great mass of the people, the successful and happy operation of our social system entirely depends. A government thus constituted cannot be conducted and administered wisely if the sources from which it derives its momentum be buried in ignorance and error."

About this time occurred an event that aroused all the sympathies of General Quitman's nature. It was the invasion, with fire and sword, of the then province of Texas by a powerful Mexican army under Santa Anna.

Upon the reception of this news he determined, if possible, to stay the threatened desolation, and, placing himself at the head of a company of faithful followers, he hastened to join the Texans in the defence of their homes and firesides, and it is to be regretted that the scope of this work will not permit the recital of his splendid services in their behalf; but his name will never be forgotten by the warm-hearted sons and daughters of the Lone Star State.

In 1839 General Quitman visited Europe, accompanied by Judge Thatcher, on business of the Mississippi Railroad Company. Upon his return he was appointed by the Governor a judge of the High Court of Errors and Appeals, to fill the vacancy occasioned by the death of Judge Pray. This appointment he declined, in consequence, it is said, of the embarrassed state of his private affairs, produced by his generosity to his friends.

He now entered into a law copartnership with J. T. McMurran in the city of Natchez, and so great was the success of the firm that General Quitman, in a few years, found himself again in opulent circumstances.

Distinguished as General Quitman was as a legislator and a lawyer, upon the bench and in acting the executive, it is not upon his services in these several relations solely, or even chiefly, that his estimable reputation rests. Warmly alive to his duties as a citizen toward the community in which he lived, and as a man to his fellow-man, he was ready at all times to accord his time and talents to promote the plans devised for elevating the condition of his fellow-creatures. In proof of this, it is only necessary to state his connection with various societies and institutions having these objects in view.

He was president of a Society for the Suppression of Duelling; director of the State Hospital; president of the Board of Trustees of Jefferson College; trustee of the State University, of the Lyceum, and president of several literary associations.

He received the honorary degree of A.M. from the College of New Jersey, and that of LL.D. from the College of Lagrange, Kentucky.

From 1839 to 1845, he lived comparatively a quiet life, but was always fond of military societies and martial exercise; and the splendid military companies of Natchez attested his superb skill and enterprise in this respect. But it was the occasion of the Mexican war that afforded that feast of opportunities which his ambition craved. It was there that his spirit revelled in the high destiny for which he was by nature constituted and intended.

In 1845 he was appointed brigadier-general in the United States army, and in 1847 he was promoted to a major-general in the regular service.

At the Democratic Convention in Baltimore in 1848, he received a very complimentary vote for vice-president, and in the same year was nominated by the Democratic State Convention of Mississippi for presidential elector.

In 1849 he was nominated for governor of Mississippi, and was elected by a majority of more than ten thousand. He was a warm friend of the Cuban enterprise, and deeply sympathized with the ill-fated Lopez expedition. He longed for the day when the "Queen of the Antilles" would plant its star in the galaxy of the Union.

His open and avowed sympathies with the filibusters caused him to be arrested in 1851 by the United States Marshal, under the direction of President Fillmore, and carried from the governor's mansion of Mississippi to New Orleans to await his trial before the Federal Court, on the charge of having violated the neutrality laws. His treatment on this occasion created intense indignation in Mississippi; and so outraged were his feelings at the novel proceeding that, on being arrested, he immediately resigned his office as governor, and tendered his resignation in a spirited letter of protest to the people, as follows:

"To the People of Mississippi: In November, 1849, I was elected by your free suffrages governor of this State. My term of office commenced with my inauguration on the 10th of January, 1850. By the provisions of the Constitution it will expire on the 10th day of January, 1852. In the middle of my term of office, and in the active discharge of its duties, I am to-day arrested by the United States Marshal of the Southern District of Mississippi, by virtue of process originating out of charges exhibited against me in the District Court of the United States for the Eastern District of Louisiana, for an alleged violation of the neutrality laws of 1818, by beginning, setting on foot, and furnishing the means for a military expedition against the island of Cuba.

"Under these charges the marshal is directed to arrest me, and remove my person to the city of New Orleans, there to be tried for these alleged offences.

"Unconscious of having, in any respect, violated the laws of the country, ready at all times to meet any charge that might be exhibited against me, I have only been anxious, in this extraordinary emergency, to follow the path of duty. As a citizen, it was plain and clear that I must yield to the law, however oppressive or unjust in my case; but as chief magistrate of a sovereign State, I had also in charge her dignity, her honor, and her sovereignty, which I could not permit to be violated in my person. Resistance by the organized force of the State, while the Federal administration is in the hands of men who appear to seek some occasion to test the strength of that government, would result in violent contests, much to be dreaded in the present critical condition of the country.

"The whole South, patient as she is under encroachments, might look with some jealousy upon the employment of military force to remove a Southern governor from the jurisdiction of his State, when it had been withheld from citizens seeking to reclaim a fugitive slave in Massachusetts.

"On the other hand, the arrest and forcible removal from the State of her chief executive magistrate, for an indefinite period of time, would not only be a degradation of her sovereignty, but must occasion incalculable injury and disaster to the interest of

the State by the entire suspension of the executive functions of its government. The Constitution has not contemplated such an event as the forcible abduction of the governor. It has not provided for the performance of his duty by another officer except in the case of a vacancy. Such vacancies cannot happen while there is a governor, though he be a prisoner to a foreign power. Although he may be absent and incapable of performing his duties, he is still governor, and no other person can execute his office.

"It follows, therefore, that in such case the State would practically suffer some of the evils of anarchy. The pardoning power would be lost. Officers could not be commissioned or qualified; the great seal of the State could not be used; vacancies in office could not be filled; fugitives from justice could not be reclaimed or surrendered; the public works, the operations of the penitentiary, and all repairs of public buildings must stop for want of legal requisitions to defray the expenses thereof. The sale of State lands and the location of recent grants must be suspended.

"The convention of the people, called at the last session of the Legislature, could not assemble for want of writs of election. In case of the death or resignation of the administrative officers of the State government, those important offices, including the treasury, would be left without the superintendence or care of any authorized person. In fine, the whole government of the State would be in confusion, and great inconvenience and perhaps irreparable injury flow from such a state of things. For all these evils there is but one remedy. That remedy is my resignation. I therefore, fellow-citizens, now resign the high trust confided to my hands, with no feeling of personal regret, except that I could not serve you better; with no feeling of shame, for I am innocent of the causes which have induced the necessity of this step. On the contrary, although personally I fear no investigation and shun no scrutiny, I have spared no efforts consistent with self-respect to avert this result. So soon as I learned that attempts would be made, under an act of Congress of the last century, to remove me from this State, I f[illegible]y mally offered to the proper authorities of the United State[illegible]

pledge or security to appear in New Orleans, and meet the charges against me, so soon as my term of office should expire, and I remonstrated against the indignity thus about to be offered, not to myself, but to the State, in dragging away from his duties her chief magistrate.

"My proposition was not accepted, and my remonstrance not heeded.

"It is not for me to complain. You are the aggrieved party. My course in the matter meets the approval of some of the most patriotic citizens near me. I sincerely hope, as it was dictated alone by my sense of duty to the State, it may meet the approbation of my fellow-citizens.

"In thus parting from my generous constituents, it would be proper to give them an account of my stewardship during the short but interesting period that I have acted as their public servant, but the official connection between us has been so summarily and unexpectedly severed, that I must defer the grateful task to a future day.

"I have but to add that, during my short but exciting period of service, I have in all things striven to be faithful and true to the rights, the interests, and the honor of the State. For this I have been abused and calumniated by the enemies of the South. Treachery and faithlessness would have secured favor from the same sources.

"Fellow-citizens, I now take my leave of you with gratitude for the generous support you have extended to me, and with cheering confidence that your honor and your interest may be safely confided to the hands of the faithful and able son of Mississippi who, as president of the Senate, succeeds to my place."

Whatever may have been the plea of justification on the part of the President of the United States for his course in this matter, it was certainly a novel incident in American history, and one fraught with extreme danger. If the governor of a State could, upon an indictment found in the Federal courts, and which might be instigated by partisan interest or even personal consideration, be dragged away from his office, and incarcerated in the prisons of another State, at the discretion of a

judge, or at the pleasure of the President, it would need but little more to clothe the latter with a power virtually as arbitrary as that wielded by the Czar of all the Russias. No enforcement act, or Ku-Klux law, could be so utterly subversive of the rights of the States and of the people.

The course pursued by Governor Quitman in this emergency was highly proper and honorable, and the reasons he assigns for his action manifest a spirit as patriotic as his prosecution was indicative of partisanship on the part of the administration.

Having been honorably acquitted of the charges preferred in the indictment, he returned to Mississippi, and, in 1851, was renominated for governor upon the issue of resistance to, or acquiescence in, the compromise measures of 1850. He had strenuously opposed those acts as being unjust and oppressive to the Southern States. But a convention of the people declared for acquiescence and submission, upon which General Quitman retired from the canvass, but with unabated devotion to the South, and undiminished ardor in support of the principles which had so long formed the basis and embodiment of his political creed. In 1855 he was nominated by the Democracy of the Fifth Mississippi District as a candidate for Congress, and was elected by a large majority.

As a representative in Congress, he kindled a new lustre around his own name, and reflected additional honor upon his State. As he had been a gallant soldier, a wise judge, and a faithful governor, he now proved to be an enlightened and liberal legislator. During his entire service in Congress, he was chairman of the Committee on Military Affairs, and by his zeal and ability in these matters added zest and momentum to the interest of the army.

At the Cincinnati Convention of 1856, he received, on the first ballot, the highest number of votes for the vice-presidency, and, in 1857, was re-elected to Congress without opposition. He died at Natchez in 1858, in the harness of public service, and was buried on the banks of the Mississippi. Born where the romantic Hudson wends its murmuring way through the Highlands of New York, it was meet and proper that his departing

spirit should mingle with the voice of the Great Father of Waters, whose mighty current was a fit emblem of his own majestic flow of soul.

It was thought that his decease was the effect of the National Hotel poisoning, having dined there on that fatal day which cost thirty-one persons their lives, and destroyed the health of a great many more. Be this as it may, from that time his health was greatly impaired, yet he clung to his duties until the adjournment of Congress.

General Quitman possessed a genius of the highest order, and of an exceedingly versatile character. Whether in the forum or on the bench; leading the dashing charge amid the thunders of battle; issuing his decrees from the throne of the Montezumas; resigning his gubernatorial chair to save the honor of his State; pleading his innocence as a traitor at the bar of Federal prosecution; defending the rights of the South in the halls of the national Congress; citizen or soldier, judge or politician, he was always equal to whatever duties might devolve upon him. He was sincere, honest, and unchanging in his attachments; lofty, open, and manly in his opposition. Chivalry and generosity were the ruling traits of his character; the one baffled the envy of emulation, while the other conquered the bitterness of opposition.

General Quitman possessed a remarkably stalwart frame, and was capable of undergoing the severest labor. He had powerful fists, which, notwithstanding his natural amiability, he sometimes used in self-defence or in resenting an insult, and always to the discomfiture of his antagonist. It was said of him that he never struck a man without knocking him down, except on one occasion, and that, he claimed, was a glancing stroke.

As a lawyer, General Quitman had few superiors, and as a judge of equity but few equals; his love of justice, keen sense of honor, and quick conscience, fitted him in a remarkable degree for the administration of the principles of equity jurisprudence; and so long as the sword of Mississippi hangs in the temple of war, and her voice is heard in the halls of justice; so long as her niche remains in the shaft of fame, will the name of John A. Quitman live in the memory and the heart of her people.

## ROBERT H. BUCKNER.

Robert H. Buckner was a native of Kentucky, and removed to Mississippi soon after the establishment of the State government, settled in Natchez, and became the law partner of John T. McMurran. This firm enjoyed for many years a high degree of prosperity, and was considered one of the best in the State.

Mr. Buckner was a man of quiet and studious habits, devoted to his profession, and prepared his cases with great exactness and care. He was fond of investigation, and was generally prepared to support his views by ample authority ; hence, he was an excellent counsellor, but was deficient in the powers of an advocate, and his mediocrity in this respect was greatly due to his modesty and meekness of manners. He possessed in an eminent degree that tender conscientiousness, power of patient investigation, and scrupulous exactness, which were so conspicuous in the character of Lord Chancellor Eldon, and which seemed to likewise fit Mr. Buckner especially for the chancery branch of the profession.

In this respect his proficiency was distinctively acknowledged, and in the year 1839 he was elected Chancellor of the State. His career on this bench was distinguished for ability, dignity, conscientiousness, and industry. He had made himself thoroughly familiar with the whole system of equity, which he administered, not in a visionary and abstract manner, but in strict accord with the settled rules and established principles of the science, dug out of the records of ages and sanctioned by the wisdom and experience of mankind ; and to him, more than to all others, is due that dignified, gentle, enlightened, and complete system of equity judicature which adorns the jurisprudence of Mississippi. For six years he presided over the Superior Court of Chancery with a wisdom and refinement, which would not have disparaged the most eminent lord chancellor that ever directed the impressions of the great seal. His court was a *sanctum* of dignity and decorum, and his decisions glow with a lustrous purity, doctrinal soundness, and logical clearness, unsurpassed by the most luminous decrees of Hardwicke or Lyndhurst. It is to be regretted that so few of these, comparatively, have been

reported; those which have been preserved are found in "Freeman's Chancery Reports." They were commended as high authority by the distinguished Chancellor Kent, and have met with great appreciation wherever they have become known.

So devoted and assiduous had been the application of Chancellor Buckner to the duties and requirements of his office that in November, 1845, he retired from the bench with enfeebled health, which continued to decline. He died at his residence near the city of Jackson on the 21st of September, 1846.

In closing this feeble sketch of this good and eminent citizen, I cannot refrain from quoting the following extract from an obituary written and published at the time of his death:

"We have all sustained a loss—the whole community has lost a patriotic and able citizen—his friends have lost one on whose kindness and goodness they could always depend in time of trial—the legal profession has lost an eminent and able member, and one of its brightest ornaments, one who both as an advocate and counsel at the bar and as an occupant of one of the most important judicial positions of the land, had done more than almost any other man to confer dignity and honor upon the station in which he was placed, and to acquire an influence and respect, throughout the State, for the court in which he had so long and successfully practised and presided, which could only be attained by unremitting ardor and industry, coupled with the utmost purity of motive, and *a full and sole* desire to do and accomplish *right and equity* between all parties.

"In serving faithfully his country and his fellow-men in every situation in life, which he has occupied, the late Chancellor Buckner has acquired a name and a reputation, brilliant and untarnished, which extend far beyond the limits of this his adopted State, and which he has left as a bright and glorious legacy to his children."

## STEPHEN COCKE.

The subject of this sketch was born in the eastern portion of the State of Tennessee, and in 1818, when quite young, removed with his parents to Columbus, Mississippi, where his father was sent under the appointment as agent for the Choctaw tribe of Indians. Here young Cocke acted in the capacity of clerk of the agency, and subsequently as clerk of the Circuit Court.

His general education was consequently of a meagre character, but he was early trained to the habits and knowledge of business. While performing the duties of circuit clerk, Mr. Cocke turned his attention to the study of law, in which he soon manifested a commendable progress. Yet it cannot be said that he ever acquired distinguished proficiency at the bar. He was noted more for diligence than aptitude in his profession. He was an indefatigable student, fond of patient investigation, and even of antiquarian researches, and his success was due more to these qualtities than to any marked intellectual brilliancy.

In 1834 Mr. Cocke represented the counties of Monroe, Lowndes, and Rankin in the State Senate, and distinguished himself for his vigorous championship of the cause of the new counties formed of the Choctaw and Chickasaw cessions.

At an extra session of the Legislature convened in January, 1835, under the call of Governor Runnells, for the purpose of extending legislation over the thirteen new counties formed out of the territory recently acquired by treaty with the Indians, and for the purpose of admitting them to representation, their respective members—one from each county, as provided by the Revised Constitution of 1832—appeared, were duly qualified, and took their seats in the House of Representatives ; but the Senate refused to recognize the legality of the House—declined all official intercourse with it, and immediately, upon its organization, passed resolutions appointing a committee to " inquire and make report whether or not other and different persons than those which constituted the Legislature at its last session, and such others as had succeeded to fill vacancies that had since happened in either House, as then constituted,

composed any portion or all of either of those bodies; and also to inquire and make report whether or not the two bodies were so assembled, and composed of such members and description of persons as were appointed, by the constitution and laws of the land, constituent members of the Legislature of the State, and whether the two bodies were so organized that the Senate, in concert with the other body assembled as the House of Representatives, could enter upon a constitutional discharge of legislative duties." This committee was, however, enjoined to carefully abstain from making any inquiry as to the qualifications and election of any individual member of the House, and confine its investigations to the organization of the two bodies in their aggregate character, and to report the causes, if there were any, why the two houses, thus assembled, were not the Senate and House of Representatives of the State of Mississippi.

Notwithstanding this, the Senate had, prior to the adoption of these resolutions, appointed a committee to act conjointly with members of the House to acquaint the governor of the organization of the Legislature, but had declined, however, to join the House in the election of a United States Senator.

As these entire proceedings are novel in our legislative history, and the report of the committee, of which Mr. John Henderson was chairman, contains an interesting discussion of the legal qualifications and of the mode and manner of electing members of the Legislature, its substance is here given. They reported that, in entering upon the duties assigned them, they had found all the essential facts to which the several resolutions had pointed their attention as circumscribed in their detail and simple in their character, and which in substance were briefly these: That, since the last adjournment of the Legislature, on the 25th of December, 1833, a writ of election had been issued by the Governor, and dated 4th of November, 1834, authorizing and requiring an election in each of the new counties (sixteen in number) to be holden on the second Monday and day following in December (then) next, to fill a *vacancy* reported as existing in each of said counties for one representative.

The counties to which this writ of election was respectively addressed were created by the Legislature on the 23d day of

December, 1833 ; and by the apportionment law of the 25th of December, 1833, there was assigned to each county, respectively, one representative, *in the next biennial session of the Legislature ;* that a *special session* of the Legislature, elected in November, 1833, and continuing till the next ensuing election in November, 1835, had been convened ; and that at this special session members from nearly all of the new counties had been returned under the election so by the Governor's writ directed, and had been qualified and had taken their seats as members of the House of Representatives.

That, from the foregoing facts, it became a difficult and important duty to so apply the principles of the Constitution and laws as to correctly ascertain whether the two bodies thus assembled were the respective branches of the Legislature, or whether there were such defect and irregularity in the organization of either body as to preclude it from the legal discharge of legislative duties.

That, by the fifth section of the schedule in the Revised Constitution of the 26th of October, 1832, it was provided that the members of the Legislature first thereafter to assemble should be elected on the first Monday and day following, in December, 1832, but to continue in office only until the next general election, which should be held on the first Monday and day following, in November, 1833, and that, from the latter date, elections should be biennial.

That, in pursuance of these provisions, the members elected on the first Monday and day after, in November, 1833, alone composed and continued the Legislature until the regular election in November, 1835.

The committee deduced the following *postulata* from the provisions of the Revised Constitution :

*First.* That the Legislature was of two years' continuance.

*Second.* That general elections were fixed at the expiration of every two years.

*Third.* That they date their commencement from November, 1833.

*Fourth.* That representatives should be chosen every two years.

*Fifth.* That the tenure of their office was for the term of two years.

They then pleaded, in support of their views, the apportionment acts, and the disruption of existing assignments by the admission of the new members, but admitted the debatable ground presented by the following provision of the Constitution :

" The Legislature shall, at their first session and at periods of not less than every four nor more than every six years until the year 1845, and thereafter at periods of not less than every four nor more than every eight years, cause an enumeration to be made of all the free white inhabitants of this State, and *the whole number of representatives* shall, at the several periods of making such enumeration, *be fixed by the Legislature*, and apportioned among the several counties, cities, or towns, entitled to separate representation, according to the number of free white inhabitants in each, and shall not be less than thirty-six nor more than one hundred : *Provided, however*, That each county shall always be entitled to at least one representative."

This the committee endeavored to parry by arguing its want of consistency : That one of the principal rules laid down, not only to point the acumen of the jurist, but founded in the plainest dictates of common-sense, to direct the mind in ascertaining the object and meaning of any instrument, is to consider it as a whole, and so to construe it, if possible, that some sense and consistency shall be found in all its parts.

That it could never be believed, because absurd and irrational, that any instrument, willingly and honestly executed, could at the same time be intended to contain rules or principles in direct opposition to each other. More assuredly was this true of an instrument containing the great and fundamental rules for the government of a free people, and drafted with that deep reflection and careful deliberation which it must be believed were bestowed upon it by those appointed to discharge the high and solemn trust of its preparation. That it was scarcely conceivable that an instrument executed under such circumstances, where every line was scanned and canvassed and

debated for weeks together, could possibly contain principles of an unqualified contradiction.

Keeping in view these principles and the provisions of the Constitution, the committee proceeded to ask, "Whether before an enumeration had been actually made of the free white inhabitants, etc., as directed, there was any mode, directly or indirectly, by which the apportionment of senators and representatives could be changed without a palpable violation of the Constitution, which provided that, until the first enumeration should be made, the apportionment should remain as was then fixed by law. They contended that the clause providing for "at least one representative from each county" was not a substantive and independent right attaching as an incident to each county at its creation, and to all counties by virtue of their existence as such, but that it was an imperative direction to the Legislature to guide it at the time of fixing the apportionment of representation. On the creation of a new county, "when," say they, "does this right of representation attach? On enacting the law forming the new county? Without further legislation, how is the new county to organize? When and how shall its elections be holden, and who shall be its returning officers?" That it could not be presumed that any would contend that a new county, on its mere creation as such, could *effectually prefer* its representative pretensions based upon this proviso, as *substantive, unqualified*, and *independent.*

Such were some of the grounds urged by the committee in support of their conclusion, which was that the body then assembled in the House of Representatives was not, in verity, the House of Representatives of the State of Mississippi.

This report was adopted by the Senate, to which Mr. Cocke dissented, and offered the following protest:

"The undersigned Senator, from the senatorial district composed of the counties of Monroe, Lowndes, and Rankin, asks leave to enter his protest against the agreement of the Senate to the report made by the select committee, to whom was referred certain resolutions by the Senate, seeking to inquire into and make report, whether the two bodies, of which the

Senate is one, and now assembled under executive convocation as the Legislature of the State of Mississippi, be or not the Legislature recognized and established by the Constitution and laws of the land.

"In looking into the said report, the attention of the undersigned was strikingly called to the readiness of the said committee to vindicate the constitutional organization of the Senate, and thereby their own qualifications. This was within the admitted constitutional province of the Senate; and had that body contented itself with its own organization, the important legislation required by the country could have proceeded harmoniously to its legitimate consummation. But in the proceedings aforesaid the Senate has not only eulogized its own organization, but has usurped the province of declaring the organization of the House of Representatives, 'the co-ordinate branch of the Legislature,' obnoxious to the Constitution. The right of the Senate to assume such an attitude is not to be found in any article of the Constitution, is a violation of the common rules and courtesy necessary in all legislation, is altogether unprecedented, and is without all legitimate principle. The only articles in the Constitution which bear at all on this branch of the subject contain the following language: 'Each House shall judge of the qualifications and elections of its own members.' 'Each House may determine the rules of its own proceedings,' etc. The undersigned is therefore compelled to pronounce that the Senate, in taking jurisdiction of the subject at all, hath assumed a superintending and appellate control over the exclusive province of the House of Representatives, denied to the Senate by the first principles of the Constitution. It is impossible to read the Constitution of this State without being impressed with the fact that the convention, in making the distribution of the powers of government, assigned them to three distinct departments: those which are legislative to one, those which are judicial to another, and those which are executive to another, and as much right had the Senate to usurp the executive and judicial authority of the State, as the exclusive legitimate province of the House of Representatives.

"The distinctive character of the representative principle of

our government is, that the people in the distribution of the powers have kept them separate, and declared that 'no person or collection of persons being of one of the departments shall exercise any power properly belonging to either of the others.' They have alike reposed confidence in each, have required of each the same moral sanctions, and made each responsible to them for the faithful discharge of public duty. The House of Representatives, by admitting the members from the new counties to qualify and take their seats, acted within its exclusive jurisdiction. The Senate hath therefore assumed an unwarrantable interference with matters which the Constitution has wisely allotted to the determination of others. . . .

"The evidences of the constitutional organization of the House of Representatives and of the Senate were at the commencement of this session reciprocally communicated to each other and they united in the passage of a joint resolution appointing a joint committee to inform the Governor of their readiness to proceed to business. This committee performed its duty, and both Houses duly received the Governor's message. The undersigned had hoped that these proceedings were indicative of the disposition of the Legislature to enter upon the discharge of its duties; but this hope, he soon found, was illusory, and the proceedings of the Senate hath resulted in the senatorial declaration that there is no House of Representatives, and thus concluded this session of the Legislature."

Mr. Cocke then proceeded to argue that apportionments were to be made by the Legislature at stated periods, and not oftener than once in four years; whereas new counties might be created at every session, and that as the liability of taxation followed immediately upon the erection of a new county, the right to representation was a substantive, independent, and immediate right, recognized and provided for by the constitutional clause declaring that every county should have at least one representative; and that consequently it was impossible for the Constitution to contemplate the existence of a new county for four or more years, bearing all the burdens of government with no voice in its legislation. This was the sum and substance of his argument, which he did not, however, express in very elegant or

forcible language, but with sufficient clearness for easy comprehension.

The position taken by Mr. Cocke was also maintained by Governor Runnells, who, in a communication made to the Senate in answer to a notification of its intention to adjourn that day, declared that "The right of a bare majority of the Senate, or indeed the entire number of that body, to adjudge of the constitutionality of the House of Representatives is denied in the broad and unquestionable language of the Constitution." Upon the reception of the message containing this clause the Senate immediately adjourned *sine die*.

The House then, refusing to acknowledge the adjournment of the Senate for a longer space than three days, appointed a committee to apprise the Governor that the two Houses of the Legislature had disagreed as to the time of adjournment, whereupon his Excellency issued his proclamation proroguing the Legislature until the next regular session, and it accordingly stood adjourned.

In 1845 Mr. Cocke was elected Chancellor of the State. This office he held for the full term of six years. He was not popular as chancellor, and acquired no distinctive eminence on the bench. His elevation was, no doubt, due in a great measure to his popularity in the Legislature, and to his efforts in behalf of the new counties.

His decisions manifest neither a high degree of legal acumen nor lucidness of style, but by patient and laborious application he succeeded in keeping the beaten track of his more eminent predecessors, and availed himself closely of precedents.



## CHARLES SCOTT.

Chancellor Scott was born in Knoxville, Tennessee, on the 12th of November, 1811. He was a descendant of a Virginia family, noted for its production of many distinguished soldiers and eminent statesmen. His father, Edmond Scott, was an eminent lawyer and judge, distinguished for his eloquence and ability, and presided for nearly thirty years as circuit judge of the Knoxville district.

Major Joseph Scott, the grandfather of Charles, was an officer under Washington in the Continental army; was severely wounded at the battle of Germantown, and after the war was appointed Marshal of Virginia by President Jefferson. Major Scott's brother, General Charles Scott, was also a distinguished Revolutionary soldier, and afterwards became Governor of Kentucky.

Charles Scott first began the practice of law in Nashville, Tennessee, where he married, and soon afterwards removed to Jackson, Mississippi, and there pursued his profession in copartnership with George S. Yerger, who had married his sister. This firm was eminently successful, and enjoyed distinguished reputation; and the ability and stanch integrity of Charles Scott, together with his high sense of honor and amiability of character, commended him so highly to the people that in a few years he was elected to the office of Chancellor of Mississippi, and long presided over the Superior Court of Chancery with great ability, and with the universal commendation of both bar and people.

It was he who first rendered the decree in the great case of Johnston *vs.* the State of Mississippi, establishing the liability of the State for the payment of the bonds of the Union Bank, that case having been first instituted in the Chancery Court; and, notwithstanding that the popular sensibilities were adverse to the result, the ability, purity, and sincere integrity, which characterized his decision, caused it to be generally received as a satisfactory emanation of conscientious duty. It was affirmed by the High Court of Errors and Appeals.

In 1859 Chancellor Scott removed to Memphis, Tennessee, where, he conceived, a broader and more prolific field was

presented to the practice of his profession, which he there entered upon with the opening prospects of a brilliant career, but so soon as the clouds of war began to gather along the horizon he returned, in 1861, to Jackson, Mississippi, determined to cast his lot with his adopted State in the impending struggle. He had been a devoted friend of the Union, but when Mississippi seceded, he promptly yielded to the demands of duty, and his heart and hand became warmly enlisted in her cause. He lived, however, but a short time after his return to Jackson, where he died, and was buried by his beloved brethren of the Masonic fraternity.

Chancellor Scott was a most devoted Mason, and as such had a national reputation. He was the author of two Masonic works, which commanded attention not only from the members of the craft, but from the general public, being noted for the learning and research displayed by their author, and also for the chaste style in which they are written. These works, "The Keystone of the Masonic Arch," and "The Analogy of Ancient Craft Masonry to Natural and Revealed Religion," still find a place in the library of every learned brother of the ancient order. Their author was for many years Master of Silas Brown Lodge, in Jackson, and afterwards was Grand Master of the Grand Lodge of Mississippi.

Chancellor Scott was not only an ardent and thorough student of the law, but he was also a ripe classical scholar, and was familiar with the standard poets and writers of modern times, particularly surpassing most of his contemporaries in his knowledge of that greatest of all modern poets, Shakespeare. His researches had even extended farther, and much of his time was devoted to sacred writers, while his knowledge of the Bible was thorough and extensive. His studies in this direction had convinced him of all the truths of religion, and he was an exemplary Christian. This sentiment pervaded his whole nature, and quickened a tender conscientiousness and amiability, which not only rendered him an ornament to society, but especially fitted him for the high office of Chancellor. He was a man of noble candor and knightly courtesy, gentle and affable in his manners, devoted to his friends, unwearied in the

performance of duty, and unswerving in fidelity to his high trust.

A bright Mason, he cherished the virtue of charity; a cultivated lawyer, he loved the principles of justice; an able and upright judge, he promulgated the purest doctrines of equity; and a good man, his heart flowed in sympathy and generosity toward his fellow-men. Many of his comrades and friends are still living in Mississippi, and cherish his memory with feelings of sincere affection.

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## JOSEPH W. CHALMERS.

The subject of this memoir was born in Halifax County, Virginia, in the year 1807. His father, Captain James Chalmers, was by birth a Scotchman and a near relative of Dr. Thomas Chalmers, the celebrated Presbyterian divine. He emigrated to America soon after the achievement of its independence, and engaged first in mercantile pursuits and afterwards in planting. His enterprise and industry met with adequate rewards, and he became the possessor of a large plantation on Dan River, and the owner of numerous slaves. His son Joseph was destined to the vocation of a merchant, and was placed at an early age as a clerk in a mercantile house, where he remained until he arrived at the age of nineteen. But the mental restraints and fettering routine of a life of trade were incompatible with the cravings of his mind and the soaring desires of his ambition. He had during his mercantile apprenticeship devoted every intervening opportunity to the cultivation of his literary taste and to the acquisition of knowledge, and after the death of his father, which occurred about this time, he determined to obey the dictates of his desire to become a lawyer, and repaired to the University of Virginia, where he spent two years, and then entered the law office of the distinguished Benjamin Watkins Leigh, in Richmond. On obtaining his license, he began the practice of his profession in his native county, under every promise which a thorough preparation and professional devotion could engender, and with every prospect which a high order of mental and moral qualities could vouchsafe to his ambition.

At the age of twenty-three he married Miss Fanny Henderson, daughter of Alexander Henderson, of Milton, North Carolina, and the grandniece of Hon. Leonard Henderson, Chief Justice of that State ; and, in 1835, having sold his patrimonial interest to his older brother, he determined to seek his professional fame and his fortunes in the West, and emigrated to Jackson, Tennessee. Here he at once took his position in the front rank of the lawyers of the Western District, and was engaged in most of the important cases that came before the courts of that section. He was one of the counsel for the notorious John A. Murrell, when that famous robber was finally convicted and sentenced to the penitentiary at Nashville. While at this bar, he recovered ten thousand dollars damages from a wealthy young man who had deceived and ruined a poor young girl under promise of marriage, and his speech on the trial of that cause is still remembered by the old citizens of the country as having been the most eloquent and pathetic ever heard at the bar of the Western District.

In 1840 he removed to Mississippi, and located in the town of Holly Springs, where he formed a copartnership with Judge Alexander M. Clayton. This connection, however, subsisted but a short time, and was dissolved by mutual consent. Mr. Chalmers soon afterwards became the partner of Roger Barton, which association continued so long as they both lived, and constituted the leading law firm of Northern Mississippi. Its practice embraced a wide range, and was large in every branch of the profession. This necessitated a division of their labors ; and while Mr. Barton devoted his attention chiefly to the criminal side of the docket, Mr. Chalmers, whose mental traits and legal acquirements seemed equally adapted to either domain, attended principally to civil cases and suits in chancery.

For a period of many years there were few cases of importance before the courts of North Mississippi in which the services of these gentlemen were not engaged. They never prosecuted, but so successful were they in criminal defences that through a long series of years, during which they defended more than a score of men for homicide, they never failed to obtain the acquittal of their clients. Chief among these defences were those

of Dyson, Nelms, and Slodge, each of whom was charged with murder, and their crimes attended with desperate and apparently hopeless circumstances.

In 1842, the Legislature of Mississippi established a vice-chancery district composed of the northern counties of the State, and provided for the election of a vice-chancellor, who should hold his court in each of these counties, and which should have concurrent jurisdiction with the Superior Court of Chancery, of all cases in equity where the amount involved in the controversy did not exceed five hundred thousand dollars. To this bench Mr. Chalmers was immediately appointed by Governor A. G. Brown, and held this position until the next regular election in 1843, when he was succeeded by Hon. Henry Dickenson, of Columbus. He discharged the duties of this office with distinguished ability, with a conscientious adherence to the principles of equity, and with a dignity and purity which gave elevation and honor to the new court.

In 1846, Judge Chalmers was appointed by Governor Brown to the seat in the United States Senate made vacant by the appointment of Hon. Robert J. Walker to the position of Secretary of the Treasury, and was subsequently elected by the Legislature for the short term; at the expiration of which he declined re-election and was succeeded by Hon. Jefferson Davis.

While in the Senate he was a warm supporter of President Polk and the measures of his administration. His speech in support of the Mexican War, and that in maintenance of the position taken by the United States in the dispute with Great Britain concerning the Oregon boundary, were regarded as the ablest delivered in the Senate on these questions.

During his term in the Senate he maintained the most cordial relations with Mr. Calhoun, and renewed with him a friendship which had originated during the nullification troubles of 1832, when Mr. Chalmers offered his services to the State of South Carolina, and was made a major in the army which that State contemplated raising for the defence of its rights.

In 1848, he was chosen elector for the State at large in the campaign for Cass and Butler, and made many able and eloquent speeches during that canvass. He was an ardent State

Rights Democrat, and prominent in all the councils of his party and the State canvasses for many years. He was an enthusiastic supporter of John A. Quitman and Jefferson Davis in their contests with Henry S. Foote in 1851. He was a devoted Mississippian, and on his death-bed expressed the wish that none of his sons might ever abandon the State, but that they might live and die faithful citizens of Mississippi. He died at his residence in Holly Springs, in June, 1853, in the forty-seventh year of his age, from the effects of dyspepsia, from which he had been a sufferer for many years. He left six children, four sons and two daughters, only two of whom are now living—General James R. Chalmers, member of Congress, and Hon. H. H. Chalmers, Chief Justice of the Supreme Court of Mississippi.

As a lawyer Judge Chalmers was thorough and profound. He possessed a vigorous grasp of intellect, a keen and ready apprehension, which could penetrate the most intricate combination that could be woven from the web and woof of subtlety. His judgment was clear and accurate, and reached with equal facility to the gist of principle and the motive springs of action. His official and professional character exhibited in a high degree that difficult combination, a suavity of manner with the energy of dispatch, and blended the purity of Sir Thomas More with the expedition of Lord Ellesmere.

But if he was eminent as a lawyer and judge, he was no less distinguished for the amiable qualities of the man and the pure and ardent sentiments of the patriot. His political convictions were deep-seated and unalterable, and he was styled the "Apostle of Democracy" in North Mississippi, an appellation which his distinguished services in promoting the interest of his party justly merited. He labored incessantly and arduously for its success, and with a confidence and vigor that kindled the hope of triumph even in the gloom of defeat. He was a fluent and forcible speaker, possessed a tasty and classical command of language, and his elocution was easy and elegant. While he was invincibly aggressive in the performance of duty and the advocacy of principle, his deportment was characterized by a modesty and decorum which asserted the accomplished gentleman and magnanimous man.



D. M. Smiley

As a lawyer, as a judge, and as a statesman, Judge Chalmers was responsive and equal to every demand of duty, met with promptness every requirement of honor and patriotism, and acquitted himself with distinction in every sphere of his life. He was enterprising, public-spirited, and generous, and was considered as a father by the junior members of the bar and the young men of his town, and by his whole people as an able, upright, and useful man, whose memory they delight to cherish, and whose example should be followed by all who seek the path of virtue and the road to true greatness and honor.

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## JAMES M. SMILEY.

James Malcolm Smiley was born in Amite County, Mississippi, on the 25th day of October, 1812. His early educational advantages were the best which the newly-settled country could afford, and being of studious habits and ambitious disposition, he availed himself to the utmost of his opportunities. His parents encouraged his thirst for knowledge, and while quite young he was sent to Jefferson College, at Canonsburg, Pennsylvania, where he remained until the establishment of Oakland College, in Mississippi, when he returned to his native State and entered that institution, which was then under the management of Dr. J. Chamberlain, and graduated there in 1834, being the only member of his class and the first graduate of the college.

He soon afterwards began the study of law in the office of William Dillingham, Esq., who was then a lawyer in large practice at Liberty, in Amite County. Here he pursued his studies one year, and then repaired to New Orleans, where he took a legal course under Hon. Alfred Hennen, and obtained license to practise under the laws of Louisiana. He then pursued a course of studies in the law department of Transylvania University, at Lexington, Kentucky, and graduated there. Returning to his native county, he began the practice of the law by himself, in the year 1837, but afterwards formed a copartnership with Hon. Van Tromp Crawford, of Amite County, which continued until the latter was elected to the circuit bench, after which Mr. Smi-

ley again practised by himself, doing an extensive and lucrative business in his own and adjoining counties.

In 1841 he married Mrs. Carroll, a most estimable lady of Amite County, and during the same year was elected to represent his county in the popular branch of the State Legislature. To this office he was twice re-elected, and closed his legislative career in the spring of 1846.

In the session of 1846, an act was passed by the Legislature organizing what was termed a "vice-chancery district," including all the counties lying south of the tier through which the Vicksburg and Meridian Railroad passes, and in the summer of that year, Mr. Smiley was elected vice-chancellor of this district, beating his popular opponent, Hon. Powhatan Ellis, by a large majority. The district was divided into sub-districts, and courts were required to be held twice a year at Natchez, Monticello, Mississippi City, and Paulding. The vice-chancellor, although comparatively a young man, was found to possess abilities equal to the position that he held, and in 1850 he was re-elected with very little opposition, and held the office until near the close of the year 1852, when he resigned and removed to the city of New Orleans.

He there opened an office, and was soon engaged in a lucrative practice in the State and Federal courts. He was employed by Mrs. Myra Clark Gaines, widow of General Gaines, in the celebrated Gaines case then pending in the courts, and it was at his suggestion and mainly through his efforts that the important and indispensable step of probating the will of Daniel Clark, upon which the claimant's success depended, was accomplished; so that to the skill and labor of Judge Smiley Mrs. Gaines is mainly indebted for all the benefits that have accrued to her in that case; and it is singular that all the compensation he received for his services in the matter amounted to a mere trifle.

In 1853 he had the misfortune of losing his amiable and devoted wife, who died of yellow fever. He remained in New Orleans until the year 1859, when he returned to Amite County, and was married about this time to Mrs. Southgate, of Newport, Kentucky, who still survives him, and cherishes his

memory with a fondness characteristic of the truest and noblest of her sex.

He resumed his practice in Amite County with flattering prospects, but the outbreak of the great civil war so paralyzed all business that there was but little transacted in the courts during its existence. In October, 1865, he was elected circuit judge of the district including the seven counties in the south-west portion of the State, and held the office under that election until he was appointed by the military authorities, from which time he continued as judge until the adoption of the new Constitution, when he was again appointed by Governor Alcorn in 1871, and again, by Governor Stone in 1876, and continued on the bench until January, 1878, when increasing ill-health and infirmities compelled him to resign. He continued to reside at Magnolia, in Pike County, until the 8th of April, 1879, at which time he died, and was buried in Amite County, near the place of his birth.

During the last two years of Judge Smiley's term of office, he ordered the release on bail of several prisoners who were charged with murder, for the conviction of whom there was a clamorous popular demand, and which subjected his conduct to a fierce animadversion. The feeling indeed became fiercely denunciative, yet Judge Smiley pursued the even tenor of his way, and was never known to take the slightest notice of the dissatisfaction. In every instance in which the bail was granted the parties appeared for trial, and not in a single case was there a conviction by the jury of murder.

In other instances he was censured for not bringing certain persons to a speedy trial who were accused of crime, and who were shielded behind the subtlety of appliances over which it is doubtful whether the judge could have any control; but the censure was nevertheless severe, and he was even threatened with impeachment.

The main charge against Judge Smiley was that he had ruled that murder was bailable. The Constitution of Mississippi declares that all cases are bailable except in "capital offences where the proof is evident or the presumption great," and a law, passed in 1875, gave to the jury the power of fixing in their

verdict the penalty of murder at imprisonment for life. But as capital cases are defined to be those in which the penalty is death, Judge Smiley, it seems, was of the opinion that, in view of this definition of the term "capital offenses," the verdict of the jury was necessary to determine the character of the crime, and that consequently all cases were bailable before conviction. And although the Supreme Court afterward declared that such a position was wholly untenable, yet it is difficult to see upon what grounds the opinion of the aged judge could be assigned as a feature of impeachable corruption.

He was also accused of fixing inadequate bail, and particularly was he censured in this respect in the case of the State *vs.* Bethea. In this case the prisoner was charged with murder, and Judge Smiley fixed his bail at two thousand dollars; but, while the sum seems small as a recognizance to hold one to trial for his life or perpetual imprisonment, in view of the just and equitable spirit which pervades the law of bailment, he was surely justifiable in taking into consideration the poverty of the accused and of the country. It may have been as difficult for Bethea at that time to procure satisfactory surety for two thousand dollars as for other men in other times to find surety for twenty thousand, and the weight of such considerations rests in the sound discretion of the judge.

In politics Judge Smiley was a life-long and ardent Whig, and prior to his promotion to the bench was a strenuous and active advocate of the measures of that party; but when he ascended the tribunal of justice, he abated all political predilections and spirit of partyism, and devoted all his powers to a conscientious and equitable administration of the law, and observed that reticence in regard to politics traditionally cherished by the legal gentlemen of the old school.

Judge Smiley possessed a remarkably kind, gentle, and amiable disposition, and was an attractive and entertaining companion. His conversation was free from anything that partook of censure, animadversion, or ridicule, and with the members of the bar he enjoyed the most intimate and fraternal relations. This was forcibly exemplified on the occasion of his resignation as judge of the Circuit Court. When it was understood at

Natchez that he had determined to take that step, the members of the Adams County bar held a meeting and passed resolutions expressive of regret at the approaching termination of the pleasant relations existing between them and the circuit judge, and presented him with a silver cup appropriately inscribed, and accompanied by kindly remarks and expressions of esteem, which were responded to in feeling terms by the judge. Similar demonstrations of regard were made by the bar of other courts of his district.

His ability as a lawyer and his character as a learned, upright, and fearless judge are well known to the older members of the profession. He was a profound and polished judicial scholar, with a clear head and accurate powers of reasoning. His addresses as an advocate to court and jury, were characterized by clearness, elegance, and force, and his arguments were illustrated by the most lucid and incisive logic. His manner was kindly and conciliatory, and his voice and facial expression pleasing and persuasive. His oratory was usually plain and pointed, and if embellished with rhetorical ornament, it was only for the purpose of illustrating his thoughts. He was one of those lawyers who brought to the Bench and Bar of Mississippi something of the prestige of olden times.

# CHAPTER VI.

## THE CONSTITUTION OF 1832—REMODELING OF THE JUDICIARY—THE BENCH—EMINENT JURISTS—1832–1850.

WILLIAM L. SHARKEY—COTESWORTH P. SMITH—DANIEL W. WRIGHT—JAMES F. TROTTER—P. RUTILIUS R. PRAY—JOSEPH S. B. THACHER.

By the Revised Constitution of 1832 the entire system of the judiciary in Mississippi was remodeled, and a broader and more expeditious channel given to the administration of justice. The provisions of that Constitution in reference to the judiciary were in substance as follows :

The first section of the fourth article declared that the judicial power of this State should be vested in one high court of errors and appeals, and such other courts of law and equity as provided for in that Constitution.

By the second section, the high court was to consist of three judges, any two of whom might form a quorum, and the Legislature was required to divide the State into three districts, the qualified voters of which were to elect one of these judges from their respective districts for the term of six years.

Section three required that the office of one of these judges should be vacated in two years, and of one in four years, so that at the expiration of every two years there should be an election of one of the judges.

Section four confined the jurisdiction of the court to such as properly belongs to a court of errors and appeals.

Section five provided for the filling of vacancies by election; but the Governor might appoint if the unexpired term did not exceed one year.

The sixth section required the judges to be thirty years of age at the time of their election.

The seventh required the court to be held twice a year, at such place as the Legislature should direct, until the year 1836, and afterwards at the seat of government.

The eighth section prescribed the manner in which the respective tenures of the judges chosen at the first election should be decided : that is, as to which should hold for two years, which for four, and which for six years.

Section nine prohibited a judge from sitting in a cause in which he was interested, and provided for the appointment by the Governor of a competent person to sit in the place of a judge so disqualified.

The tenth section provided that the salaries of the judges should not be diminished during their continuance in office.

Sections eleven and fifteen inclusive provided for the organization of circuit courts, and ordained that the circuit judges should be elected in their respective districts, for the term of four years, and should reside in their districts, and that the districts were to contain not less than three nor more than twelve counties.

Original jurisdiction in all matters, civil and criminal, was confered upon the circuit courts, provided that in civil cases the sum in controversy exceeded fifty dollars. These courts were to be held twice a year in each county in the State. The judges were permitted to interchange circuits, and were to receive a compensation, which was not to be diminished during their continuance in office.

Section sixteen established a separate superior court of chancery, with full jurisdiction in all matters of equity, and provided for the election of a chancellor by the qualified voters of the State, for a term of six years, who should be thirty years of age at the time of his election ; but it also gave the Legislature the power of conferring equity jurisdiction on the circuit courts of each county in all cases where the amount in controversy did not exceed five hundred dollars ; also in all cases of divorce and for the foreclosure of mortgages.

The eighteenth section provided for the establishment of a court of probate in each county of the State, with jurisdiction in all matters testamentary and of administration, in all affairs



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pertaining to orphans and in the allotment of dower; in all cases of idiocy and lunacy, and of persons *non compos mentis*. The judges of this court were to be elected by the qualified electors of the respective counties for the term of two years.

Section nineteen provided for the appointment of the clerk of the high court of errors and appeals, who should hold his office for the term of four years, and for the election of the clerks of the circuit and probate courts, whose respective terms should be two years. Sections twenty and twenty-one provided for a board of police for each county, to consist of five persons, which should have the supervision of roads, highways, bridges, ferries, and of all matters of county police, and prescribed their mode of election and qualifications.

The twenty-second section provided for the election by districts of justices of the peace in each county, and limited their jurisdiction to cases involving not more than fifty dollars.

Section twenty-four authorized the Legislature to establish, from time to time, such inferior courts as might be deemed necessary, and to abolish them whenever it might be deemed expedient.

Such was the status of our judiciary on the adoption of the Revised Constitution of 1832. Let us now turn to the distinguished gentlemen who administered the laws under this new system.

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## WILLIAM L. SHARKEY.

The professional minds of lawyers and judges may be divided and aptly assigned to two separate and distinct classes, which may be designated respectively the perceptive and the memorative. To one class belong those whose legal knowledge and perception are coterminous with the inscriptions of memory, and consist of a vague medley of garnered precedents and authorities, which must be resorted to and invoked on all occasions when it becomes necessary to grapple with any question of importance. Their knowledge of law is like that of the precocious youth who learned mathematics by committing Euclid to memory without comprehending a single principle involved, or

how a single proposition was proven. To this class usually belong those whose general education is limited, or whose powers of perception have never been whetted by close and continued application, and always those who are naturally deficient in the organs of analysis and abstraction.

The other class comprises those who depend upon their own conscious resources, who combine and embody the principles of law with their own perceptions, and mingle them with the elements of their own judgment. Like Lord Thurlow, they do not inquire so much "*how* the case was decided," as "*why* it was so decided." With the first class, law is simply the result of memory: an undigested mass, a lurid and confused superficiality, a medley of incomprehensibilities; while with the other class it is an emanation of their own minds, and they speak as authorities themselves. Such was eminently the case with Chief Justice Marshall, whose decisions required no authorities to support them; and such was the character of the judicial mind of William L. Sharkey, who for eighteen years presided in Mississippi as the Chief Justice of her High Court of Errors and Appeals.

In treating of the character of this distinguished jurist, it will be difficult to steer between the Scylla of injustice on the one hand and the Charybdis of adulation on the other. His was a character of which every feature belongs to the domain of greatness, and whose composition is found only in the loftiest spheres of human existence. William Lewis Sharkey was born near a place called at that time Mussel Shoals, on the River Holston, in the State of Tennessee, during the year 1797. His maternal grandfather, Robert Rhodes, was a native of Germany, from near the city of Cologne, on the Rhine. His father, Patrick Sharkey, was a native of Ireland, and was reared in the vicinity of Dublin. He came to America when a young man, in company with his elder brother Michael, who was afterwards the captain of a Virginia Company in the Continental army during the War of the Revolution; at the termination of which, Patrick found his way to the new and beautiful country between the Cumberland and the Alleghanies. Here he married and settled, and here resided until his family con-

sisted of a wife and three sons—William Lewis, Jacob Rhodes, and James Elliot.

In the year 1803, Patrick Sharkey removed his family to the Mississippi Territory—a country which at that period offered but the roughest features of life, especially to those who were destitute of means sufficient to command the few costly comforts and conveniences that it was possible to obtain in a new and thinly settled community. The family fixed their abode on a small farm on the Big Black River, in Warren County, near the village of Warrenton, then the county seat. Here, amid the heterogeneous population of a country whose richness of soil was attracting all classes of people from the States, William Lewis Sharkey grew to that manhood which was destined to shed such lustre upon his State and upon his age.

Compelled by the straitened circumstances of his parents to perform the labors incident to a farm, he had but little opportunity to avail himself of even the limited educational advantages afforded by the primitive schools of the Territory; but, as if with an intuitive consciousness of a grand destiny, the boy labored on, devoting his leisure hours to the acquirement of those rudiments which were to kindle the fires of genius and emblazon the laws of his country.

Before the expiration of his fifteenth year he entered the army of General Jackson as a substitute for his uncle, was present at the battle of New Orleans, and witnessed the overthrow of the British on the plains of Chalmette, on the memorable 8th of January, 1815. Both of his parents having died, he found on his return the horrors of orphanage superadded to the other hardships under which he labored, and his two younger brothers depending upon his care. Yet, with a judgment and discretion rare in one of his years, he determined to remain upon the farm until he could earn and garner sufficient means to enable him to gratify that desire for knowledge which, though thwarted by untoward circumstances, had always burned in his bosom.

This purpose he achieved in a few years, and with determination in his heart, ambition in his soul, and the proceeds of the sweat of his own brow in his hands, he repaired to Green-

ville, Tennessee, and at a school of some note in that place acquired, by close application, a respectable knowledge of the English branches in a comparatively brief period. He then visited Lebanon, Tennessee, and there read law a short time, under the instruction of the distinguished Dr. Hall.

On his return to Mississippi he entered the office of Messrs. Turner & Metcalf, an eminent law firm in the city of Natchez. Having now for the first time the practical advantages suitable to his inclination and commensurate with his ambition, he applied himself to the study of law with the utmost interest and assiduity, and with all the vigor of his nature. The result was speedy and proportionate with his efforts, and in 1822 he was admitted to practice at the bar of the Supreme Court, and established his office at Warrenton.

Here his ability, integrity, and application, soon fruited into a respectable and growing practice, but on the removal of the county seat of Warren County to Vicksburg, in 1825, he moved his office to that place, and formed a copartnership with the distinguished John I. Guion. Here, under more favorable auspices, he rose rapidly in professional reputation, and soon attained a lucrative practice.

In 1827 Mr. Sharkey was chosen the representative of Warren County in the Legislature, in which he was assigned to the Judiciary Committee, with Judge Pray and General Quitman. In this capacity a more ample opportunity was afforded him for the exhibition of those eminent features of his mind which afterwards gilded his career upon the bench.

On the organization of the High Court of Errors and Appeals, under the Constitution of 1832, he was elected by the people as one of the three judges which composed that tribunal, and was appointed Chief Justice, which position he held during eighteen years.

Prior to this he had been elected the circuit judge of his district, but held that office only a few months before he was promoted to the high bench.

About this time, Judge Sharkey married Mrs. Wren, widow of Belfield Wren, an estimable lady, whose qualities of mind and heart rendered her an eminently fit companion for the great

jurist, and who is yet living to cherish the memory of those amiable qualities which so highly adorned his private character.

It has been said of poets that they are born such, and not made; and it is equally true that there are some men who seem naturally fitted and destined for the station of judges: men who possess great candor, in whose minds an acute discernment and a sound judgment are predominating faculties, and to whom the pursuit and attainment of justice afford the highest mental gratification. To this class evidently belonged Hardwicke, Eldon, Hale, Mansfield, Marshall, and Kent, and to these I have no hesitancy in adding the name of Chief Justice Sharkey.

Judge Sharkey possessed in an eminent degree that quality so essentially requisite in a judge—a firm and unbending integrity. No circumstance could induce him to swerve from the strict line of justice. His opinions are models of legal and logical elucidation, and they all possess, as a prominent feature, a thorough analysis of the case, with a view of setting forth in a clear and unmistakable light the relations and rights of the parties. His conclusions are never seized in a harsh and abrupt manner, but are deduced along an illuminated path in a clear, lucid, and logical method, so that when presented they readily receive the homage of satisfaction. The style of his decisions is forcible and elegant, rising sometimes to a chaste eloquence, which is the only kind that the diction of law will permit.

During his long continuance upon the bench, Judge Sharkey established many eminent precedents, and settled many questions of law that had hitherto been held in conflict both in our own courts and those of other States. He also made many novel applications of the common law to render it conformable to our polity and suitable to our condition and the state of our society. These will be found sprinkled through many volumes of the Mississippi State Reports.

The all-pervading feature of his mind was a comprehensive, vigorous *common sense*—a sagacity which, while it expanded to the grandest outlines, did not despise or overlook the minutest details; and his judgment found a subject in every concern of life. This faculty was the trident by which he so long ruled

the "vasty deep" of common-law and equity jurisprudence as the Chief Justice of the High Court of Errors and Appeals. His mental character was admirably adjusted for grappling with emergencies. He was never at a loss to find a clear path through the most complex array of law and the most complicated state of facts, and whenever in a cause there was an incongruity in applying the common law to the incidents of society, he never failed to sift from the antiquated principle some element compatible with the justice of the case.

In 1850 Chief-Justice Sharkey resigned, and resumed the practice of law in Jackson, where he then resided. It is understood that this action was induced by pecuniary embarrassment, arising from obligations which he had incurred as surety for his friends, and which, notwithstanding the respectable salary of his office, so rapidly diminished his means that he was compelled to return to the bar, which offered him much greater emolument.

Not long after his retirement from the bench he was appointed by Mr. Fillmore, then President, as United States consul at Havana. This he declined for like reasons—the state of his private affairs. As a politician Judge Sharkey had few superiors in wisdom and purity, and it is a noteworthy fact that during the whole time of his public services he was a stanch Whig, while his constituency was as intensely Democratic. He was bitterly opposed to the scheme of repudiation, which he considered as both ruinous and dishonorable, and at the end of his third judicial term, in 1847, he was opposed by a candidate who was in favor of that policy, and with whom a large majority of the people were in accord. Yet so unbounded was his official popularity, and so great was the popular appreciation of his services, he was triumphantly re-elected to the bench.

Judge Sharkey was a member of the celebrated Nashville Convention, held in 1850, and was chosen the president of that body, and in this capacity his great candor, firmness, and impartiality, together with his cheerful complacency and urbanity of manners, gained for him universal respect and admiration. On the adjournment of the convention he proceeded to Washington where he was much consulted in regard to measures

proper for allaying the excited sectional feelings of that period.

While in Washington, President Fillmore tendered him the position of Secretary of War, but this he declined, upon the plea of his incompetency to perform the duties pertaining to that office. He was too much of an Antonine, both in principle and disposition, to engage in the promotion of a pursuit which, under ordinary circumstances, he considered as the disgrace and calamity of human nature. He was emphatically a man of peace, and during all those trying times which preceded, accompanied, and followed, the great civil war, his voice was continually raised in its behalf. He was bitterly opposed to the secession of the Southern States from the Union, and thought that an antidote for its necessity could be found in a returning sense of justice and in the fundamental law of the land.

He was a faithful devotee of the Constitution, and viewed it as the true and only palladium of national safety and national happiness and prosperity; hence throughout the long and bloody contest his sympathies were decidedly on the side of the Union—not that he did not view with pride and admiration the glorious career of the Southern arms, and sympathize in all the trials and woes of his people, but that his deep-seated principles and unalterable convictions swayed the other attributes of his nature; and no sooner had the work of blood ceased than, throwing himself into the broad breach of reconstruction, he became the faithful pilot and the Pythias of his people.

In consequence of his well-known attitude prior to and during the great struggle, he was appointed by President Johnson, in 1865, Provisional Governor of Mississippi. The delicate and ungrateful duties of this office he performed, however, to the great satisfaction of all parties, and at the first election under the new system he was chosen a Senator from Mississippi in the National Congress, but before his admission to this office, the reconstruction policy of the President having been abrogated by Congress, he was, together with the other Southern members, refused his seat.

This rebuff, which frustrated the efforts he contemplated for the reconciliation of the two sections, was met with his usual

complacency and good-humor, and returning to Mississippi, he quietly resumed his practice of law, which he continued to the time of his death, which occurred in 1873. In manners Judge Sharkey was kind and polished, and his conversation brilliant and attractive. He was of a decidedly religious turn of mind, and took great pleasure in examining and meditating upon the truths of Holy Writ. He was a strict member of the Methodist Episcopal Church, and died in the communion of that sect.

That was a beautiful idea in the philosophy of Zeno: that we dwell within the body of God; that He is the Soul of all, and the universe is His body; that the noble features of the body are no less worthy of veneration than the divine and supreme attributes of the soul; and this earthly veneration consists in the love of virtue and the exercise of that which is noble in the human character. The life of Judge Sharkey was a noble commentary upon this doctrine. He loved his fellow-man, and his private and social life was as amiable and refining as his public character was brilliant and elevating.

The simplicity of his virtues admitted no vanity or affectation, and he enjoyed, with like modesty, the honors of his high office and the veneration of society, while a cheerful and serene temper asserted the benevolence of his nature.

The qualities of his heart were not strained, but flowed in gushing torrents from deep and unfailing fountains; and their exercise found among his friends and associates a reciprocity that but added intensity to their character.

Full of years and of honors, he carried with him to the grave the love, the admiration, and the regrets, of his fellow-citizens. His name is inscribed in letters of gold upon the jurisprudence of Mississippi, and there it will remain so long as the voice of justice shall be heard in the land, and will be handed down from age to age, through the vastness of incomprehensible time, as a magistrate distinguished and venerated for his talents and integrity, a citizen honored for his splendid public services, a man beloved for his untarnishable virtues.

But it now becomes necessary to close this sketch, however imperfect it may be; and with the hope that this feeble por-

traiture may prove an incentive, especially to the young members of the profession, to imitate the virtues of its subject, I will close by introducing the resolutions passed by the members of the bar of the Supreme Court of Mississippi, on the 19th of May, 1873, in reference to the death of Judge Sharkey, which manifest in an eloquent manner the esteem in which he was held by his brother members of the profession. The committee reported as follows :

" The mortal life of William Lewis Sharkey has closed—a life made honorable and distinguished by great public services, which conferred enduring public benefits. In meeting together to render a tribute to his memory, we are moved as well by the gratitude we feel for the rich legacy he has left us as by our profound admiration for the ability which enabled him to bestow it, and the just pride we feel in his widely extended fame. In the infancy of the State he presided over her highest judicial tribunal as Chief Justice ; expounding her Constitution and her statutes, and expounding, illustrating, and enriching her jurisprudence ; and in the exercise of his high functions, not only displayed a consummate ability, but exalted the judicial office by his integrity, firmness, and independence. We recall with affectionate respect the mingled dignity and courtesy of his bearing on the bench, and the simplicity, decorum, and purity of a private life united to such great talents and to such eminent public virtues. And we bear testimony to his steadfast devotion to constitutional liberty, and to the ardent, pure, and elevated patriotism which characterized his public and private career. Therefore,

" *Resolved*, That we cherish a profound respect and veneration for the memory of William Lewis Sharkey, gratitude for his great public services, and a just pride in his well-earned fame ; and we tender our sympathies to his family.

" *Resolved*, That we wear the customary badge of mourning for thirty days.

" *Resolved*, That the Supreme Court of this State and the Circuit Court of the United States be requested to order the foregoing to be spread upon their minutes ; that a copy of the same be forwarded by the chairman of this meeting to the

widow of the deceased, and that the papers of this city and State be requested to publish them.

" J. W. C. WATSON, A. H. HANDY,
" GEO. L. POTTER, D. SHELTON,
" W. P. HARRIS, *Committee.*"

The Chief Justice responded as follows :

" The court cordially unite with the members of the bar in their tribute of respect to the memory of our departed friend, William L. Sharkey, distinguished alike for his private virtues and for his public services. Many of the members of this bar affectionately remember him as an upright man and an excellent judge, who for many years dignified the ermine of justice upon this bench. It is their testimony that, in the learning of the common law and equity jurisprudence, he had few equals and hardly a superior. He was even more distinguished for strong, practical good sense ; for firmness of will and straightforward honesty of purpose. The candor and patience with which he listened to argument found fitting counterparts in the impartiality and equity of his judgments, which will remain enduring monuments of his eminent ability as a jurist, and will ever command the confidence and respect of all who are devoted to the noble science of jurisprudence. As a testimonial of affection and of sorrow, the court will order the proceedings of the bar to be entered on the records."

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## COTESWORTH P. SMITH.

Cotesworth Pinckney Smith was a native of South Carolina, but removed to the Mississippi Territory prior to its cession by Georgia to the General Government, and resided in that portion which was afterwards included in Adams County and subsequently erected into the county of Wilkinson. Here his boyhood was passed, amid the wild scenes of the country, and in the enjoyment of such advantages as the state of its society afforded at that period ; but being endowed with great energy, natural talents, and more than ordinary ambition, Mr. Smith, on reaching his maturity, turned his attention to the law, which he practised for many years with success.

In 1826 he was chosen to represent Wilkinson County in the lower branch of the Legislature, and as chairman of the Committee on Internal Improvements performed an active and laborious part in that body. In 1830 he represented the county of Wilkinson in the State Senate, and so greatly had his reputation as a lawyer increased, and his popularity as a man of energy, firmness, and uprightness enlarged, that in 1833 he was elected under the new Constitution one of the judges of the High Court of Errors and Appeals. His term expired in 1837, and in 1840 he was appointed by the Governor to fill the vacancy on that bench occasioned by the death of Mr. Justice Pray, but was succeeded during the same year by the election of Mr. Justice Turner by the people.

Returning to the practice of law with a riper experience, and with his talents invigorated by the wide scope of their exercise upon the bench, Judge Smith stood among the most prominent of the Mississippi bar. But the popularity he had acquired as a judge of the High Court asserted itself in his being recalled to that bench, and on his election, in 1849, he was made Chief Justice of the State.

Chief Justice Smith was naturally endowed with talents of a high order. He possessed an eager appetite for knowledge, and extended his inquiries to every department of science; and this the brilliancy of his intellect permitted him to do without any apparent detraction from his legal ability. He was fond of miscellaneous reading, and was well versed in all the polite literature both of the past and of his day. He was consequently an agreeable companion, and one of the most interesting and accomplished conversationalists of his time. He was a man of great intellectual independence, and however well he might be acquainted with the opinions of others, he promptly subordinated every question to the dictates of his own views.

He delivered the opinion of the court in the famous case of the State of Mississippi *vs.* Johnson, which fixed the liability of the State for the payment of the bonds of the Union Bank, and which he knew would place him in a hostile attitude to the party in control of the State Government, to a large majority

of the people, and would cost him his seat upon the bench and perpetual exclusion from office.

In this case Judge Smith bases his conclusions upon the broad and solid ground that the same principles which govern in matters of contract between private individuals apply to all contracts to which the State has become a party. This rule is founded on the presumption that sovereign States, who are supposed to be always ready to perform their undertakings and to discharge their just obligations, could desire no better rules by which to ascertain their own obligations and rights than those according to which they dispense justice to their citizens.

He was deeply learned in all the branches of his profession, and seemed to comprehend its most subtle principles more by intuition than by laborious investigation. But his knowledge of the law was not more conspicuous than other traits of his character, which seemed to eminently fit him for the bench. He was candid, conscientious, and impartial; firm in his opinions, fond of justice, and fearless in his denunciation of wrong. In this respect he very much resembled Sir Matthew Hale, with whom his uniformly conscientious and equitable administration of law entitles him very properly to be ranked. Judge Smith had but one aim, and that was duty; and this purpose extended to all the relations of life. If the natural kindness and amiability of his disposition ever faltered it was because it conflicted with this ruling motive.

His manners were gentle, urbane, and conciliatory, and the honors bestowed upon him reflect the estimation in which he was held by his fellow-citizens. He held the office of Chief Justice for nearly twelve years, with uniform ability, unflagging zeal, and unswerving fidelity to the principles of law and justice. He died in 1863.

The following proceedings are taken from the minutes of the High Court:

"At a meeting of the bar of the High Court of Errors and Appeals, in Jackson, on February 23d, 1863, held for the purpose of expressing the feelings of the bar touching the death of the late Chief Justice, Hon. Cotesworth P. Smith, upon motion, Hon. William L. Sharkey was requested to act as chairman,

and William S. Yerger as secretary; and upon motion, Hon. William S. Yerger, Thomas J. Wharton, and George L. Potter were appointed a committee to draft resolutions expressive of the sentiments of the meeting.

"The Attorney-General, Hon. T. J. Wharton, presented the following report, which was unanimously adopted:

"Since the last adjournment of this court, the State of Mississippi has mourned the loss of many valued and honored sons. Among the number the Attorney-General has announced to the court the name of the late learned and upright Chief Justice of the High Court of Errors and Appeals, the Hon. Cotesworth Pinckney Smith. Whilst we mourn with the whole people of the State the loss of all her honored children, we owe to the memory of the great and good Chief Justice more than the common meed of tears. Associated for years with him upon terms of the most intimate and kindly intercourse, watching him daily in the conscientious and equitable administration of the law, we have been enabled to form a just appreciation of the character of the man, and thus to know how great the loss which the Bench and Bar, as well as the State, have sustained in his untimely decease.

"Born in Mississippi while yet under the territorial government of Georgia, Judge Smith grew with the growth of his State. Honored and trusted at all times by his fellow-citizens, he never sought rewards or honors from any other source, and never held an office not conferred by them. Endowed by nature with mental faculties of the highest order, with moral and physical courage which knew no fear, of humane and kindly disposition, and actuated by a conscientious rectitude of purpose and principle which nothing could swerve, Chief Justice Smith presented to the world the model character of a judge. Learned, conscientious, fearless, and upright, for nearly twelve years he presided in this court; and each and all of us can bear willing testimony that during all that time he administered justice without sale, denial, or delay; knowing no man nor any party in his judicial action, but doing his duty in every case regardless of men or parties, and with an eye single to law and justice.

"In the decease of such a judge the State mourns one of her

worthiest sons. In the death of such a man the world has lost one of its noblest ornaments.

"As a feeble tribute to the memory of so much worth, and that those who come after us may know how highly we who knew him best appreciate it, the members of the bar of the High Court of Errors and Appeals

"*Resolved*, That, in common with the people of the State, they deplore the great loss sustained by the country in the decease of Cotesworth Pinckney Smith—a judge without fear and without reproach, a citizen conscientious in the discharge of every duty, and a man whose heart was open to every sympathy for the wants and sufferings of his fellow-man.

"*Resolved*, That in his decease the High Court has sustained an irreparable loss, which, felt by all, is more particularly felt by his associates upon the bench and by the members of the bar, who, daily associating with him, best knew his worth, and therefore most deplore his loss.

"*Further resolved*, That we tender to his associates upon the bench our sympathy for the loss sustained by them in common with us all, and that we offer to the widow and family of our deceased friend and brother the sincere condolence of friends who, knowing well the great loss they have sustained, are only able to feebly express their sentiments of love and admiration for his worth, and their sincere grief for his untimely end.

"*Resolved, further*, That a copy of this preamble and these resolutions be forwarded to the family of the deceased, and that the Attorney-General request that they be spread upon the minutes of the High Court.

"WILLIAM L. SHARKEY,

"*Chairman.*"

## DANIEL W. WRIGHT.

Daniel W. Wright was born in the eastern portion of the State of Tennessee, and was reared near Huntsville, Alabama, whither his father's family had removed. Here he prepared himself for the bar and began the practice of law, but in 1822–3 he emigrated to Mississippi and settled in Monroe County, at a place called Hamilton. Here he rose to eminence in his profession, and at the first election under the Revised Constitution, in 1833, was chosen one of the judges of the High Court of Errors and Appeals, for the term of six years. This office he held until 1838, when he resigned, and having lost his wife about this time he retired also from the bar, and made his residence with his daughter, in the town of Pontotoc, where he died a year or two afterwards.

Mr. Justice Wright was a man of a naturally strong mind, but in his latter days lacked somewhat the capacity of vigorous application. He never wrote an opinion during the five years he occupied a seat upon the high bench, which was not at all in conformity with his early vigorous career at the bar, and can be accounted for only upon the ground of an unfortunate conviviality to which he became addicted, and which impaired his energies. Judge Wright was undoubtedly a lawyer of ability and an orator of no ordinary powers. He possessed a close and comprehensive discernment, was a good judge of law, and saw at a glance its proper application. But it was as an advocate before a jury that Judge Wright exhibited his greatest powers. This was the sphere to which his genius seemed especially adapted. He was full of vivacity and good-nature, fond of humor and anecdote, and often wrested that from the good-will of the jury which he could have scarcely obtained from its judgment. He was an exceedingly kind and generous man, and consequently possessed great personal popularity, which was no doubt the main cause of his success.

## P. RUTILIUS R. PRAY.

Mr. Justice Pray was a native of the State of Maine. He was well educated, and on removing to Mississippi began the practice of law in the County of Hancock, from which he was, in 1828, elected to the Legislature, and was placed upon the Judiciary Committee of the House of Representatives with William L. Sharkey and John A. Quitman, and even among those distinguished men acquired prominence for his ability.

He was president of the convention which adopted the Revised Constitution of 1832, and presided over that body with great dignity and parliamentary skill. As a lawyer Mr. Pray possessed qualities that enabled him to rise rapidly in his profession, and in 1833 he was elected by the Legislature to revise the laws of the State.

In the performance of this duty, he was required to prepare a Revised Code of the statutes, and report its completion to the Governor, who was requested to convene the Legislature for the purpose of its adoption. He was authorized to alter and amend the phraseology of existing statutes, and to prune, correct and arrange, alter and amend, the provisions thereof, so far as might be necessary to render the Code harmonious within itself, and consistent with the provisions of the Revised Constitution. This work he completed with great labor, but not in a satisfactory manner, and it was rejected by the Legislature. At the regular election in November, 1837, he was chosen a judge of the High Court of Errors and Appeals, which office he held until his death, which occurred in 1839.

It is not understood that Judge Pray possessed any pre-eminent qualities as a jurist, but he possessed qualifications that rendered him distinguished as a lawyer and eminent as a citizen.

## JAMES F. TROTTER.

The subject of this sketch was born in Brunswick County, Virginia, on the 5th of November, 1802, but at an early age removed with his father's family to East Tennessee, where his education was obtained, mostly under the tuition of Rev. Mr. Doak, a pious divine, for whom his pupil ever entertained the greatest reverence. He was there prepared for the practice of law, and having obtained his license, removed in 1823–4 to the County of Monroe, Mississippi, and located at Hamilton, then the seat of justice of that county. Here he soon became the competitor and rival of Daniel W. Wright, which emulation continued as long as both remained at the bar.

As a lawyer the ability of Mr. Trotter was marked and well recognized. He was devoted to his profession, and brought to its study and exercise all the powers of his mind and all the energies of his nature. While he possessed no feature of remarkable brilliancy, the full round orb of his character and varied qualifications justly entitled him to the distinction to which he attained. His intellect was acute and penetrating, and his powers of comprehension ready and conspicuous. He had an easy command of language, and, while the style of his rhetoric was without flash or studied ornamentation, his logic was characterized by its weight and solidity. He was a man of indefatigable industry and of stern morals: almost stoical in his aversion to idleness and intemperance. It was said of him that he was always in a hurry. Yet, notwithstanding the assiduity of his compliance with the demands of the most jealous of professions, which necessarily precluded him in a great measure from mere social intercourse, he was a man of great personal popularity, and was several times chosen to represent Monroe County in the State Senate.

On the reorganization of the courts under the Constitution of 1832, Mr. Trotter was elected judge of the Circuit Court of his district, and carried to the bench the same penetrating judgment and dispatch of business which had rendered him successful at the bar.

In 1838 Judge Trotter was elected to a seat in the Senate of

the United States, to succeed Judge Black, who had resigned; but before taking his seat he resigned also, and, it is apprehended, upon the ground that the bench offered, as he conceived, a sphere more suited to his abilities and taste than the fickle arena of politics.

In December, 1838, he was appointed to the bench of the High Court of Errors and Appeals, to fill the vacancy occasioned by the resignation of Mr. Justice Wright, and in November, 1839, was elected by the people for the term of six years, but resigned in 1842.

Mr. Justice Trotter delivered many important decisions while upon the high bench, and his opinions are noted for great strength and dignity of style, as well as for a penetrating discrimination, a sound judgment, and a profound knowledge of the law. Though gentle and affable in manners, he was stern in pursuit of justice; and, in integrity, courage, and firmness, his character is not inferior to that of Lord Chief Justice Holt, whom he also resembled in his manner of excluding all extraneous or collateral questions from the case under consideration, and carefully withholding an expression of his opinion upon any point not necessary to the gist and justice of the cause.

His opinion in the case of Jane B. Ross *et al. vs.* Vertner *et al.* (5 Howard 305), is a striking instance of this character. In this case it seems to have been the effort of the learned counsel to present to the court as many points as the utmost tension of its features would admit; but they were gracefully waived by the judge, and the question rehung upon its proper hinge. And this I conceive to be a most eminent quality in a supreme judge—to avoid the expression of mere *dicta*, which tend only to confuse and mislead the practitioner without authoritatively affirming any principle.

On retiring from the bench of the High Court, Mr. Justice Trotter removed to the town of Holly Springs and resumed the practice of law, but, in 1855, was elected vice-chancellor of the northern district of Mississippi, which position he held until the separate chancery system was abolished by the code of 1857, when he again returned to his practice.

In 1860 he was appointed professor of law in the State University, and occupied that position two years.

While Judge Trotter was apparently always adverse to an active participation in the mere strife of political parties, he was an ardent supporter of the Southern cause, and no one felt more deeply than he the result of the great conflict; but he comprehended the import of the arbitration which the sword had awarded, and sought by his example to reconcile his fellow-citizens to the inexorable fiat. On the reorganization of the courts in 1866, he was appointed to the circuit bench, and in the first court which he held he presented the following preliminary remarks in his charge to the grand jury of De Soto County, which, on account of the dignity and patriotism of their sentiments and the soundness of their advice, are well worthy of a place in this narrative. Judge Trotter said:

"It is to me personally a source of great gratification to meet you here to-day in company with the other constituent members of the court. It is upwards of four years, I believe, since a court was organized and holden in De Soto County. During that eventful period our State has passed a terrible ordeal, in the midst of which she has been enveloped in shadows, clouds, and darkness. The return of peace has enabled us to see the extent of the devastation which the work has made, and to contemplate the whole of our losses. It is a gloomy spectacle: wherever we go or wherever we turn our eyes, we witness the sad memorials of our misfortunes, melancholy evidences of our sufferings, and the cruelty and savage ferocity of our late enemies. To-day we meet amidst the ruins of our country, with all the bitter memories of the past crowding upon our minds. One consolation is the hope that we have reached the bottom, and are soon to float again upon the surface of peaceful and busy life. Though stripped of our most valuable possessions, reduced to poverty, and some of us to actual destitution, yet, being free to exert our energies, we will soon rebuild our ruined fortunes and re-establish our prosperity. We indulge in no unavailing regrets, no useless griefs, but, for-

getting the past, push forward with manly fortitude and buoyant hope toward the goal of our destiny.

"We are happy that civil law has been restored, and that peace and good order are about to resume their rightful dominion. Meeting under the sanction of our constitution and laws, we may, I fondly hope, again assert the rightful jurisdiction of our State and enforce our own municipal code. It is a source of heartfelt congratulation that we assert these high privileges without danger of hindrance or molestation. It is true that some of the acts of our Legislature, in reference to the labor and conduct of our late slaves, may not have been entirely satisfactory to the Federal authorities, yet I can scarcely anticipate a case which can bring the decisions of this court into conflict with any of the orders of the 'Freedmen's Bureau.'

"Since the sad era of our surrender we have rendered a cheerful obedience to the laws and Constitution of the United States, and as a proof of the sincerity of our professions of allegiance, and in order to re-establish amicable relations with all of our sister States, we made a sacrifice of upwards of four millions of slaves, a peace-offering upon the altar of the Union; and in addition, we came under solemn obligations to obey the Constitution and laws of the Union, by complying with the terms of amnesty held out to us by President Johnson. These engagements we design to continue and observe in good faith, as we have truly done in the past.

"Having failed, as other nations have, in maintaining our separate existence as a free people, we laid down our arms when we could use them no longer, and submitted to our destinies. We took arms in defence of what we believed to be a righteous cause—the cause of self-government—and we struggled against overwhelming numbers for four years. It was all in vain. But let it be remembered that, though we lost our cause and almost everything else, we yet preserved our honor. Every day's disclosures show more clearly the immense disparity in the military forces of the two belligerents, and the wonder is, not that we were finally beaten, but that we were able to maintain the contest for so long a period. Every day adds a fresh chapter to the skill and conduct of our leading generals, and to the heroic

daring and endurance of our troops. Here is ample cause for congratulation. We have won true glory in our struggle for liberty—a struggle which has no parallel in the history of the world.

"But I will dismiss this topic with one single reflection more. I express my feelings by the simile of Huddlesford's oak, which, after braving the storms of centuries, was at last uprooted and all its branching honors laid prostrate on the ground.

> "'Thou who, unmoved, hath heard the whirlwind chide,
> Full many a winter round this craggy bed,
> And like an earth-born giant hast outspread
> Thy hundred arms, and Heaven's own bolts defied,
> Now liest along thy native mountain's side
> Uptorn! Yet deem not that I come to shed
> The idle drops of pity o'er thy head,
> Or basely to insult thy blasted pride.
> No! still 'tis thine, though fallen, imperial oak,
> To teach a lesson to the wise and brave.'

Our people always loved the Union. It was associated in their minds with the names of Washington, Madison, and Mason, and Randolph, the fathers of the Constitution. In all the wars which have been waged against foreign powers by the United States, the Southern people have been conspicuous for their zeal and gallantry in maintaining the honor and interest of the Federal arms. Let our sister States but do us simple justice by according to us the rights that belong to us under the Constitution, and they will find us as ready to shed our blood in the defence of the Union, as we showed ourselves to be in the war of 1812 or that of 1846.

"We have now every motive to be true and loyal to the Federal Constitution and laws. We have given our word and pledged our solemn vows, and if permitted, we will redeem them to the satisfaction of the world. I feel assured, indeed I know, that the people of the South desire most earnestly to live in peace under the Union, and enjoy its blessings and protection. And I will not doubt that, in time, the people of the United States will see that we enjoy the protection which our allegiance

challenges and demands. For allegiance and protection are and must be reciprocal."

These were noble and patriotic words, and at the time of their utterance Judge Trotter little recked of the sorrows yet in store for his people, and but little comprehended the vengeful spirit which was even then poising its arrows at the South. He maintained his position on the circuit bench until the time of his death, which occurred in Holly Springs, March 9th, 1866.

The bar of Holly Springs paid a touching tribute to his memory, and in response to its presentation for record upon the minutes of the court, Judge Cayton, having granted the request, said :

"It may not be out of place for me to add a few words of testimony to the merits of the deceased as a man and his worth as a judge. It has been my fortune somewhat to tread in his footsteps, in his judicial career. When he resigned his place as a member of the High Court in 1842 I was elected his successor. He had left behind him on the bench a reputation which any man might be content to equal. I never heard any one utter a word against his uprightness and purity as a judge or his truthfulness as a man. He seemed to have made the divine injunction, 'Thou shalt do no unrighteousness in judgment,' his motto and his model, and he lived up to it in his fullest sense. His knowledge of his profession was varied and profound, and his opinions rarely failed to carry conviction with them.

"His taste, as well perhaps as his talent, suited the quiet repose of the bench better than the strifes and the contests of forensic efforts. Hence he spent the greater part of his professional life clothed in the ermine of justice ; and well did its folds become him. It received no spot or stain by act of his, and was laid aside as pure and white as the mantle that wrapped his form in the grave.

"Nearly twenty-five years have since passed—years filled with eventful changes and revolutions in private as well as public life, and I stand here to-day, again his successor in judicial station. And I may well be content to earn the same meed of approbation which has just been stamped upon his course by those most competent to pass upon it.

"The poet who had the boldness to assemble the whole human race before the throne of the Omnipotent and the Eternal for judgment, placed in the same category of guilt and of punishment

"'The judge who takes a bribe
And the advocate who pleads his cause amiss.'

"Of a certainty we may pronounce our brother free from all danger of this destiny; and may we all strive, each in his place, to be equally exempt from such a doom when our final sentence is passed."

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## JOSEPH S. B. THACHER.

Joseph S. B. Thacher was a native of Massachusetts, and was reared and educated in the city of Boston, where his father held an important judicial office. He was a descendant of Oxenbridge Thacher, who was employed, in connection with James Otis, by the merchants of Boston, in 1761, to defend them against the *Writs of Assistance*, and whom, John Adams says, the advocates of the crown hated more than they did Otis or Samuel Adams. After having engaged in the practice of law for a short time in his native city, he removed to Mississippi, in search of those richer fields, which the fame of Prentiss, Walker, and other natives of the North, had clothed with dazzling inducements. Mr. Thacher settled in Natchez about the year 1833, where he enjoyed a thrifty practice, and in 1837 was elected to succeed John I. Guion as judge of the criminal court established by the Legislature in the counties of Warren, Claiborne, Jefferson, Adams, and Wilkinson. This office he held until 1840, when the Legislature abolished the "criminal court."

In 1843, after a spirited political canvass, entirely incompatible with the nature and dignity of the office, Judge Thacher was elected one of the judges of the High Court of Errors and Appeals for the term of six years. During his candidacy for this office charges of a serious nature were circulated, connecting him with some dishonorable transaction in the city of Bos-

ton prior to his emigration to Mississippi. These, after a series of criminations, recriminations, and a lengthy vindicatory correspondence, were finally cleared away.

At the expiration of his term, in 1849, Mr. Justice Thacher was a candidate for re-election, and during the canvass was charged with having procured, during his candidacy in 1843, the publication of articles highly disparaging to the character of his opponent, and savoring of a detestable egotism.

These articles appeared in an "Extra" of the Gallatin *Signal*, and were secretly circulated a few days preceding the election, over the signature of the editor, who, during the canvass of 1849, upon application being made to him in regard to the matter by the gentlemen of the bar and others of Natchez, swore to the procuration of Judge Thacher, and disclosed his letter arranging the terms and suggesting a schedule for the circulation of the articles.

This unfortunate disclosure conduced, no doubt, largely to the defeat of Judge Thacher; for, being a Democrat, he was on the popular side of politics, while his opponent, Hon. Cotesworth P. Smith, besides being a Whig, was liable to the, at that day, further objection of being an avowed advocate of the liability of the State for the payment of the bonds of the Union Bank. But it must be remembered also that Mr. Justice Smith had already served one term upon the high bench, and the manifest disparity in the ability of the two judges was decidedly in favor of the latter.

It cannot be claimed for Mr. Justice Thacher that he was a lawyer of comparatively much depth of professional learning. His talents were more of the literary order than professional. He was a strenuous advocate of the cause of education, was much devoted to science and the fine arts, and wrote literary essays of considerable merit.

His election to the high bench, in 1843, was due, no doubt, more to his position upon the bond question than to any recognized ability, or special qualification for the office, thus evincing the folly and absurdity of resting judicial promotions upon mere questions of politics and the prejudices of parties.

The career of Judge Thacher upon the bench was character-

ized by uprightness, impartiality, and integrity. His decisions manifest a laborious effort to reach the utmost limits of justice. He was a close abider of precedent, and held fast to every constitutional feature. He was a man of pure morals, and in social life shone with a brilliancy which only the highest order of accomplishments could kindle.

# CHAPTER VII.

## THE BAR—EMINENT LAWYERS—1832–1850.

SERGEANT S. PRENTISS—JOHN I. GUION—JOSEPH HOLT—VOLNEY E. HOWARD—ANDERSON HUTCHINSON—DANIEL MAYES—WILLIAM E. ANDERSON.

We have now arrived at a period the most brilliant in the history of the Mississippi bar; when its shining lights flashed an effulgence that attracted the gaze of admiration in all parts of the country; when it glittered with a galaxy of genius for which the scroll of oblivion has no place. It was during this period that the flush tide of speculation rolled its sparkling bubbles over the State, alluring thousands within its seductive but ruinous vortex; when banks of unlimited and baseless issues sowed, with lavish hand, the seeds of financial ruin, which finally fruited into one common and overwhelming crash.

It was now that the best legal talents were called for and aroused—a genius that could baffle and expose the artifice of cunning, an integrity that could thwart the designs of villainy, and a love of justice that could rescue the innocent and unfortunate from the clutches of avarice. All these demands were fully met, and the bar of Mississippi during that period takes rank with any that graces the annals of the forum. Let us take note of some of these, and first of

## SERGEANT S. PRENTISS.

A few years prior to the period referred to, a pale and slender young man made his appearance in the town of Natchez. He was an entire stranger, and on his arrival had, it is said, but five dollars in his pocket, which he soon expended in endeavoring to secure the good wishes of his landlord and other inmates of the hotel. He did not think, as he afterward said to a friend, that his capital was sufficiently ample for investment in trade or speculation, and conceived that the best use he could make of it was to purchase, if possible, the kindness of his host. In this he succeeded, and obtained credit for his board until he could procure a situation as teacher. This purpose he soon achieved, and entered upon his duties as tutor to the children of Mrs. Shields, a widow lady residing in Natchez. This position he held about two years, and during that time devoted all his spare hours assiduously to the study of the law.

As a mere private tutor and a friendless and penniless stranger, he had but poor social advantages among the aristocratic circles of Natchez, and consequently his life was monotonous and retired. At the end of the second year of his experience as teacher he abandoned his tutorship, entered the law office of the distinguished Robert J. Walker, and, having soon acquired license to practise law, he immediately entered upon his profession. And now, with no friend but his resolution, and no fortune but his talents, he leaped into the forum, an armed knight, amid an almost unparalleled array of legal learning and forensic ability. The first sound of his voice in the halls of justice drowned every whisper of supercilious conjecture, and drew upon him the gaze of wonder and admiration from bench, bar, and box.

There he stood, the commissioned champion of destiny, the plumed hero of victory, the personification of knowledge without recognition, of eloquence without plaudit, of fame without a trumpet: an unheralded victor, he seized the reins of genius and dashed away to fields unfurrowed and unfought.

Sergeant Smith Prentiss was born in the State of Maine, and in the city of Portland, on the 30th of September, 1808.

The paternal branch of his family was of English descent,





while that of his mother, whose maiden name was Mary Lewis, was of Welsh origin. This, he said, was the whole amount of his genealogical knowledge. It was thought, however, that his American ancestors came over among the Pilgrims ; and his father, William Prentiss, was a strict adherent to the stern doctrines and rigid principles of the Puritan creed.

Mr. Prentiss had two sisters, who alternately resided with him in Mississippi, and several brothers, one of whom he educated for the ministry at a German university. His noble and affectionate letters to these and to his mother constitute a diary of filial and fraternal devotion rarely equalled in the pages of memoir. He had lost his father when quite young, and in consequence of a severe fever had become, at an early age, an incurable cripple. This circumstance created that solicitude on the part of his mother which, notwithstanding her slender means, resulted in affording him advantages which she was unable to bestow upon her other sons.

After the usual academical preparation, Mr. Prentiss was sent to Bowdoin College, which he entered at the age of fifteen, and graduated with distinction at the end of the usual term.

Thrown now entirely upon his own resources, yet undaunted by the frowns of circumstances, the young man determined to seek his fortune in the far West, and at the age of nineteen bade adieu to his widowed mother, his friends, and the scenes of his childhood, and turned his face toward the Ohio. Arriving in the flourishing city of Cincinnati, he determined to seek employment and a home there. In this he did not succeed ; and it was now that the finger of destiny touched him and pointed him to those sunny fields which were to afford a fit harvest for his genius, and turning his steps toward the great Father of Waters, he landed in Natchez in 1827.

Here, after the experience already mentioned, he formed, in 1829, a copartnership with General Felix Huston, then a distinguished lawyer, and afterwards famous for his part in the Texan War of Independence.

In 1832 Mr. Prentiss removed to Vicksburg and entered into a law firm with John I. Guion, a gentleman of the highest

social and professional rank, and who had been the partner of William L. Sharkey until the latter was raised to the bench.

This firm, it is needless to say, became one of the most celebrated in the Union, and was continued until the year 1836, when Mr. Guion was made judge of the criminal court.

In gazing back upon the career of this remarkable man, it resembles the glare of some brilliant meteor that suddenly flashed along the horizon, and flamed toward the zenith with increasing glory, until, gathered into the bosom of the great orb of day, it forms a part of the light of the universe.

In attempting to depict the legal character of Mr. Prentiss it will be difficult to find words or images to represent the varied features and manifestations of his genius. The secrets of his great success, the qualities upon which it hinged, though manifold, were yet so closely allied and intimately blended that respectively they formed but ripples upon the surface of a continued stream. He possessed in an eminent degree those powers of analysis which could enter into the very gist and heart of a proposition and wind it off upon a thousand spindles, and a masterly synthesis that could then gather up such threads as suited his purpose, and weave them back into one compact and unbroken cable. He could twist his subject into every conceivable attitude, and lead his audience to every possible point of observation: from peak to peak, from summit to summit he would carry it to the lofty Pisgahs of his own views, where, astounded, it would gaze with giddy conception upon prospects which the mind could reach only when buoyed by the wings of his gorgeous imagery. Subsidiary to this was his classical fancy and wonderful scope of imagination. His powers of comparison seemed to be almost illimitable. There was nothing in language that did not afford him a metaphor; nothing in history or romance that did not furnish him an allegory; and naught in nature that was not subservient to his imagery, and that did not lend power to his illustrations.

The vastness of the universe and the firmament of heaven imparted their sublimity to his mind. The blushing flower, the glowing iris, and the spangled canopy of night, shed their beauties upon his soul. The gnarled trunk, the dwarfed shrub, the

creeping vine, and their counterparts in the moral world, inspired his wit and ridicule, while his humor was fed by all the incongruities of humanity.

Such were his intellectual features, which constantly asserted themselves, whether he stood before a jury of the backwoods or before the bar of the High Court ; on the flower-decked rostrum, surrounded by thousands of eager listeners, or in the halls of Congress, the same halo of genius clustered around his brow. Calm and self-possessed, he was never at a loss for either subject-matter or a happy manner of expression.

As an orator, Mr. Prentiss had few superiors. He possessed in an eminent degree that active emotional energy which Demosthenes characterized as the chief ingredient of eloquence—a capacity for deep and manifest conviction, the power of feeling and of making others feel, a just appreciation of the principle embodied in the adage, "*Si vis me flere, primum dolendum est tibi.*"

There was no subject which he could not clothe with interest. He would gather up the dry leaves of some hackneyed political theme, and so adorn and irradiate them with his eloquence that they would fall like corollas of roses upon his enchanted audience. He possessed the "imperial voice" of Mirabeau ; and, as Collard said of Berryer, with him oratory was not merely a talent, it was a power. He was more than an orator : he was the living personification of human speech in its splendor and in its majesty. In him all was eloquent—the tone, gesture, attitude, and look, as well as the inspiration. Yet underneath all this glitter flowed the deep, strong current of knowledge. His eloquence never assumed the character of mere superficiality, but was the sparkling ebullition of the caldron of thought that seethed beneath, the aroma of the flowers of his mind. While he possessed an almost inimitable command of language, it was not the mere result of memory, but his words were the natural and well-fitting garments of his thoughts. His memory was one vast storehouse of facts, so orderly arranged, so stratified and laminated, that he could at any time pluck whatever he desired from its copious vaults. Law was there, with its ten thousand precedents, to answer to his

call. History held up to his glance its musty tomes and volumes vast. Poetry was there, with her sparkling gems, and smiled upon his nod ; and there Science spread her mysteries to his gaze. He had but to will, and all presented their sparkling goblets to his lips.

In the spring of 1837, he represented Warren County in the Legislature, and as a member of the House of Representatives was vehement in his opposition to the admission of the members from the new counties created out of the Chickasaw and Choctaw cessions, during which he procured a protest severely censuring the conduct of the Speaker, and in which he was joined by several other members, to be spread upon the journal of the House ; and when that body declared the legality of the admission of the new members, he tendered a violent protest against the whole proceeding and retired from the House.

As a politician the biography of Mr. Prentiss forms a part of the history of the Union. In the fall of 1837, after a memorable canvass, he and Mr. Word were elected, as the Whig candidates for Congress, over the Democratic candidates, General Samuel Gholson and Col. J. H. F. Claiborne. These gentlemen, however, had been chosen at a special election, held in July of that year under writs issued by Governor Lynch, to obviate a vacancy that would have existed in the Mississippi representation at a called session of Congress convoked during that summer, in consequence of the expiration of the term of the preceding delegation ; and notwithstanding the election of Mr. Prentiss and his Whig colleague, Mr. Word, at the regular election held in November following, it was contended that the special election of Messrs. Gholson and Claiborne conferred upon them the tenure of the entire term. This was the subject of a fierce contest, and it was on this occasion that Mr. Prentiss made his celebrated speech in the House of Representatives on the " Mississippi contested election," and which he closed with the following beautiful and often-quoted peroration :

" You sit here, twenty-five sovereign States, in judgment upon the most sacred right of a sister State—her right to representation : that which is to a State what chastity is to a woman or honor to a man. Should you decide against her, you tear

from her brow the richest jewel that sparkles there, and bow her head in shame and dishonor. But if your determination is taken, if the blow must fall, if the violated Constitution must bleed, I have but one request to make. When you decide that she shall not herself choose her own representatives, then blot from the spangled banner of the Union the star that glitters to the name of Mississippi, but let the stripe remain as a fit emblem of her degradation !"

The two parties and the friends of the contestants in the House of Representatives were equally divided, but the casting vote of Mr. Polk, who was then Speaker, caused Mr. Prentiss and his colleague to be rejected, and the whole question was referred back to the people of Mississippi.

At the ensuing election in 1838 Mr. Prentiss was re-elected, and took his seat in the House of Representatives. It must be confessed that his career in Congress, though brilliant, was not so glorious as was anticipated. His convivial disposition and the temptations of the capital no doubt impaired to some extent his capabilities. The few speeches that he made, however, in the House of Representatives, as that, for instance, on "defalcations," and that on the navy, though bitter and sarcastic, sparkle with beautiful images and startling comparisons ; but none of his speeches in Congress can compare with many that he made on the stump and at the bar.

His celebrated speech on the Wilkinson trial at Harrodsburg, Kentucky, in 1839, was a masterpiece of forensic eloquence. The history of this case is given by Mr. Thorp in the *American Review*, September, 1851, and in substance is as follows : Judge E. C. Wilkinson, a distinguished gentleman of Mississippi, was engaged to be married to an accomplished young lady of Louisville, Kentucky, and during the month of December, 1838, accompanied by her brother and a young friend, he proceeded to that city for the purpose of consummating the hallowed bands, and on their arrival there one of the party ordered a suit of clothes from a well-known tailor of the place, and which, when called for, proved to be unsatisfactory. Upon this a contest arose in the shop, which resulted in the tailor's being struck by one of the party. The three gentlemen, ashamed of

the rencounter, immediately returned to their rooms at the Galt House; but the tailor, breathing vengeance against his assailants, went into the streets, and by exaggerated statements of the affair enlisted many of his friends in his scheme of revenge, and accompanied by these he proceeded to the Galt House, under pretext of procuring the names of the three gentlemen for the purpose of causing their arrest. Here they tarried around the office of the hotel until the Mississippians came down to supper, when the latter were immediately assaulted by the friends of the tailor, which resulted in one of the most terrible tragedies. The Mississippians were severely wounded, and two of their assailants were instantly killed. Judge Wilkinson and his companions were arrested and committed for trial; but the Legislature of Kentucky, which was then in session, granted a change of venue, and the trial was removed to Harrodsburg. Here Mr. Prentiss was summoned to the defence, and here he made the great speech which gathered all Kentucky into the fold of his admirers.

He began by explaining the change of venue—the prejudice among the populace of Louisville—that his clients had come to Harrodsburg for justice—had fled thither for protection, "even as to the horns of the altar." He then paid a glowing tribute to the dignity and learning of the presiding judge, to the impartiality of the jury, and to the honor and gallantry of Kentuckians generally. After which he proceeded to state the grounds of defence. This was simple: 1st. A conspiracy to inflict personal violence. 2d. Reasonable apprehension. The law applicable to these two propositions he stated in a manner equally simple. It was, as he said, "a mere transcript from the law of nature." This done, he proceeded to dissect the evidence: strand by strand he pulled to pieces the tangled hank, and held up every thread to the gaze and inspection of the jury, and then, rejecting the rotten and the false, he twisted an irrefragable cable with which he bound the conspiracy to the minds of the jury. Then turning to the circumstances of the parties, and to the impossibility of the quarrel's being sought by Judge Wilkinson, he said: "With buoyant feelings and pulse-quickening anticipations, he had come more than a thousand

miles upon a pilgrimage to the shrine of beauty, and not of blood ; upon an errand of love, and not of strife. He came to transplant one of Kentucky's fairest flowers to the warm gardens of the sunny South. The marriage-feast was spread, the bridal wreath was woven, and many bounding hearts and sparkling eyes chided the lagging hours. The thoughts of the bridegroom dwelt not upon the ignoble controversy which for an unguarded moment had occupied his attention, but upon the bright and glorious future, whose rapturous visions were about to become enchanting realities.

Under such circumstances Judge Wilkinson could not have desired the conflict. Had the fires of hell blazed in his bosom, they must have been quenched for a while. The very fiend of discord would have been ashamed, fresh from a voluntary, vulgar, bloody quarrel, and reeking with its unsightly memorials, to have sought the gay wedding banquet." It is needless to say that Judge Wilkinson and his companions were acquitted.

But if the eloquence of Mr. Prentiss was irresistible when employed in the defence of the innocent, which was his especial delight, the power of his withering invective was no less fatal in the prosecution of the guilty. His speeches in the trial of Mercer Bird and Alonzo Phelps are said to have been the most powerful ever made before a jury in Mississippi.

Bird was convicted in the face of strong doubts as to his guilt, but his subsequent confession confirmed the opinion of Mr. Prentiss, and proved his penetrating scrutiny. He believed him guilty, and brought to bear upon the case that transcendent eloquence which never failed to resolve the sternest doubt into conscientious conviction.

Alonzo Phelps was a native of New England, but as a vagabond, a robber, and a murderer, had long infested the Mississippi. It was said that he had murdered no less than eight persons, committed robbery upon robbery with impunity, and had always succeeded in making his escape, until finally he murdered a man in the vicinity of Vicksburg, for which he was arrested and placed upon his trial. His prosecution was the occasion of one of Mr. Prentiss's most powerful efforts. It was then that indignation and contempt added fury to his eloquence, and

turning upon the prisoner, whom he characterized as the "Rob Roy of the Mississippi," he depicted, in the most terrible colors of the imagination, the merited punishment of his crimes, which was beyond the power of any human tribunal to inflict, and which nothing but the fires of hell kindled to full blast around his head could expiate. Under this scathing denunciation the prisoner grew desperate, his muscles twitched with convulsive rage, his eyes glared with raving fury, and he afterward, while in prison, told Mr. Prentiss that during his speech he was several times on the eve of seizing one of the guns of the guard, which were stacked around the bar, and shooting him down. Mr. Prentiss replied that he saw his motive, was watching him, and was prepared for him. Phelps was of course convicted and sentenced to death, but was killed in attempting to again make his escape.

While he poured the vials of bitter vituperation upon the head of guilt, he never failed to draw an inspiration of the sentimental from every romantic feature and tender circumstance of his cases. The following is a striking instance of the exercise of this quality:

A young gentleman of Virginia, who possessed considerable property, had loved a young lady there who rejected his suit and married another, upon which he removed to Mississippi and destroyed himself by dissipation, but in his will bequeathed his entire property to this lady, who had then become a widow. She accepted the bequest, but the heirs of the young man endeavored to dispossess her of the legacy, upon the grounds that the young man was *non compos mentis* at the time of the devise, and brought an action to test the question "*devisavit vel non.*" Mr. Prentiss was employed in the defence, and during the trial invoked his conceptions of the beautiful and his powers of eloquence to add new charms to the circumstances. He said: "At the approach of death the mind will often cast off the clouds by which it has been long obscured, and the heart, however perverted by intemperance, will suddenly recover its former purity. So, doubtless, in the last moments of the life of this unhappy man, a remembrance of his early love shone across the dreary lapse of his after years, and the image of that first-loved

and never-forgotten one, rising above all intermediate objects, recalled the fond hopes of his youth ; and under these vivid influences he strove to redeem the errors of his life by an act of noble generosity. Thus dying,

> "'. . . like the dolphin, whom each pang imbues
> With a new color, as it gasps away,
> The last still loveliest, till—'tis gone—and all is gray.' "

The lady was permitted to retain her legacy, the fruit of unrequited love.

Mr. Prentiss possessed a wonderful degree of self-possession. He was once defending an action of ejectment in the Circuit Court of Washington County, and there happened to be upon the jury an old hunter from the swamps of Deer Creek, named Belcher. The plaintiff's counsel had exhibited his title, and closed his argument with such a stirring peroration that "Old Belcher," as he was called, could not refrain from venting his conviction, and exclaimed from the box, "*That's a good title; I go for the plaintiff.*" Mr. Prentiss arose, and with a pleasing smile said, "Wait a minute, Belcher ; wait till you have heard my side." "Well," said Belcher, throwing himself back, "*I'll wait.*" Mr. Prentiss then disclosed his case, and closed with one of his characteristic appeals. He saw its effect, and turning to Belcher, asked, "What do you think of that, Belcher?" "*That's a good title too,*" said Belcher. "*I'll go with the majority.*"

His arguments of mere questions of law were clear, perspicuous, and compact ; his effort was to whittle every question down to a point—to disrobe it of all technicalities, and exhibit the naked principle ; and when this was done he would proceed in a logical manner to develop its application. His arguments in the case of Vick *et al. vs.* the Mayor and Aldermen of Vicksburg, 1 How. 381 ; the Planters' Bank *vs.* Snodgrass *et al.*, 4 How. 573 ; and Ross *et al. vs.* Vertner *et al.*, 5 How. 305, are striking manifestations of this quality.

In the last-named case Mr. Prentiss entered into an elaborate exposition of the nature of residuary trusts, and of the powers of corporations to execute trusts, and showed that a court

of equity would never permit a trust to fail for want of a trustee. These questions arose upon the contest of the last will and testament of Isaac Ross, of Jefferson County, who had devised that his negro slaves, if they so desired, should be transported to the coast of Africa, for which purpose an appropriation was made from the residue of his estate, in trust to the American Colonization Society.

In 1839 Mr. Prentiss, at the request of the leading Whigs of Mississippi, became a candidate for the United States Senate, and entered upon a vigorous canvass for that office. But whatever may have been his chances of popularity with the people, had the election rested upon the popular vote, he was defeated before the Legislature. But he was not yet to retire from the political world. An event was now approaching which absorbed every other consideration, and engaged all the powers and energies of his nature—the Presidential election of 1840. Mr. Prentiss leaped into the canvass, and almost every city from New Orleans to Portland thundered with the applause of his eloquence.

It was during this canvass that he addressed for the first time the people of his native city. There, on the common where thirteen years before he had gambolled, a wayward and friendless youth, he now saw the rushing tread of thousands eager to do him honor and catch his words. His mother was present, and the old lady's heart must have swollen with pride as she caught the eloquent strains that gushed in living streams from his lips and rolled away amid gorgeous imagery, bearing upon their surface the minds and the hearts of the audience, until nothing seemed left to the people but the power to admire and applaud. But it is foreign to the features of this work to follow him farther in his political career. It belongs to the history of the country.

In the spring of 1842, Mr. Prentiss was married to Mary Jane Williams, daughter of James C. Williams, of Natchez. From this time it seems to have been his desire to eschew politics altogether, and devote himself entirely to his profession. He was a kind and devoted husband, and his private affairs seem now for the first time to have occasioned him any particular

solicitude. His expensive political canvasses had absorbed a large portion of his means, while his disappointments and the treachery of political friends had created a feeling of disgust for the world, which he had never before experienced. The only question in the politics of the State that seemed to interest him after this was that of repudiation : this he denounced at all times and under all circumstances as a *monstrum*, *horrendum*, *informe*, *ingens*, a kind of moral and political malady which should be eradicated at all events. Such was the tenor of all his speeches of that period.

In 1845 his financial embarrassments had become so great that he determined to remove to New Orleans, where brighter prospects awaited the practice of his profession. This step was occasioned in part by a decision of the Supreme Court of the United States, which deprived him of his interest in the Vicksburg "Commons," on which he had erected costly buildings and expended large sums of money. He now cut himself loose from all parties and all politics, and, having formed a copartnership in New Orleans with Mr. Soulé, devoted his time exclusively to his practice, and to the acquisition of a mastery of the civil law. And while it may be that Mr. Prentiss acquired no additional fame in Louisiana, yet the very fact that he was able, under the circumstances, to cope with the most eminent members of that bar, marked the transcendency of his genius. To men of ordinary talents it would have been a reckless and hazardous undertaking to step from the forum of a common-law State into the arena of civil-law jurisprudence, with the expectation that a knowledge of the one would unlock the intricate system of the other. A proficient in Blackstone could not in consequence be an adept in Justinian. Yet the success of Mr. Prentiss before the Louisiana courts shows that he had also mastered the principles of the civil law ; how, and by what extraordinary method, his splendid genius could alone explain.

Among the last public speeches made by Mr. Prentiss was his address to the returned volunteers of the Mexican War, at a public reception given them on their arrival at New Orleans, in June, 1847. Although he had opposed the war, on account of what he conceived would be the fruits that would grow out of

it, yet this was just such an occasion as called forth his best efforts. Glorious was his theme, and gloriously did his eloquence acquit itself. His speech sparkled with sentiment, glowed with patriotism, and blazed with an eloquence that sent a thrill to the heart of every soldier, and stirred the mingled depths of pride, and joy, and sorrow, in the bosom of the vast audience. His tribute to the memory of the dead, his compliments to the gallantry of the living, and the welcome which he described as awaiting them at their homes, where every hill would blaze with bonfires, and every valley ring with shouts of praise and joy, were truly sublime.

"Welcome," said he, "citizen soldiers, soldier citizens. Your neighbors will regard you with respect and affection. Your children will feel proud whenever they hear the names of Monterey and Buena Vista, and a grateful nation has already inscribed your names upon its annals. Indeed it is a noble sight, worthy of the genius of this great Republic, to behold, at the call of the country, whole armies leap forth in battle array, and then when their services are no longer needed, fall quietly back and commingle again with the communities from whence they came. Thus the dark thunder-cloud, at nature's summons, marshals its black battalions and lowers in the horizon; but at length, its lightnings spent, its dread artillery silenced, its mission finished, disbanding its frowning ranks, it melts away into the blue ether, and next morning you will find it glittering in the dew-drops among the flowers, or assisting, with its kindly moisture, the young and tender plants.

"Gallant gentlemen, you will soon leave us for your respective homes. Everywhere fond and grateful hearts await you. You will have to run the gauntlet of friendship and affection. The bonfires are already kindling upon the hills. In every grove and pleasant arbor the feast is spread. Thousands of sparkling eyes are watching eagerly for your return. Tears will fill them when they seek in vain among your thinned ranks for many a loved and familiar face; but through those tears will shine the smiles of joy and welcome, even as the rays of the morning sun glitter through the dew-drops which the sad night hath wept."

A few months prior to this he had made his great speech in New Orleans in behalf of the starving Irish in the famine of 1847. The occasion was a meeting of the citizens for the purpose of sending relief to the sufferers, and over which the Governor of the State presided. The assemblage was first addressed by Mr. Clay, who was then on his visit to the South-west. He was followed by Mr. Prentiss in a most eloquent, pathetic, and soul-stirring speech, of which the following passages will convey but a dim idea:

"The Old World stretches out her arms to the New. The starving parent supplicates the young and vigorous child for bread. There lies upon the other side of the wide Atlantic a beautiful island, famous in story and in song. Its area is not so great as the State of Louisiana, while its population is almost half that of the Union. It has given to the world more than its share of genius and of greatness. It has been prolific in statesmen, warriors, and poets. Its brave and generous sons have fought successfully all battles but their own. In wit and humor it has no equal; while its harp, like its history, moves to tears by its sweet and melancholy pathos. Into this fair region God has seen fit to send the most terrible of all those fearful ministers who fulfil His inscrutable decrees. The earth has failed to yield her increase. The common mother has forgotten her offspring, and her breast no longer affords them their accustomed nourishment. Famine, gaunt and ghastly famine, has seized a nation with its strangling grasp, and unhappy Ireland, in the sad woes of the present, forgets, for a moment, the gloomy history of the past. We have assembled, fellow-citizens, to express our sincere sympathy for the sufferings of our brethren, and to unite in efforts for their alleviation. This is one of those cases in which we may without impiety assume, as it were, the functions of Providence. Who knows but what one of the very objects of this great calamity is to test the benevolence and worthiness of us upon whom unlimited abundance has been showered. In the name, then, of common humanity, I invoke your aid in behalf of starving Ireland. He who is able and will not give for such a sacred purpose, is not a man, and has no right to wear the form. He should be sent

back to nature's mint, and reissued as a counterfeit on humanity of nature's baser metal.

"Oh, it is terrible, that in this beautiful world which the good God has given us, and in which there is plenty for us all, men should die of starvation! You who have never been beyond the precincts of our own favored country; you, more especially, who have always lived in this great valley of the Mississippi—the cornucopia of the world—who see each day poured into the lap of your city food sufficient to assuage the hunger of a nation, can form an imperfect idea of the horrors of famine, of the terror which strikes men's souls when they cry in vain for bread. When a man dies of disease, he alone endures the pain. Around his pillow are sympathizing friends, who, if they cannot keep back the deadly messenger, cover his face and conceal the horrors of his visage as he delivers his stern mandate.

"In battle, in the fulness of his pride and strength, little recks the soldier whether the hissing bullet sing his sudden requiem, or the cords of life are severed by the sharp steel. But he who dies of hunger wrestles alone, day after day, with his grim and unrelenting enemy. He has no friends to cheer him in the terrible conflict; for if he had friends, how could he die of hunger? He has not the hot blood of the soldier to maintain him; for his foe, vampire-like, has exhausted his veins. Famine comes not up like a brave enemy, storming, by a sudden onset, the fortress that resists. Famine besieges. He draws his lines around the doomed garrison; he cuts off all supplies; he never summons to surrender, for he gives no quarter. Alas for poor human nature! how can it sustain this fearful warfare? Day by day the blood recedes, the flesh deserts, the muscles relax, and the sinews grow powerless. At last the mind, which at first had bravely nerved itself for the contest, gives way under the mysterious influences that govern its union with the body. Then the victim begins to doubt the existence of an overruling Providence; he hates his fellow-men, and glares upon them with the longings of a cannibal, and it may be dies blaspheming!

"Who will hesitate to give his mite to avert such awful results? Surely not you, citizens of New Orleans, ever famed

for your deeds of benevolence and charity. Freely have your hearts and purses opened, heretofore, to the call of suffering humanity. Nobly did you respond to oppressed Greece and struggling Poland. Within Erin's borders is an enemy more cruel than the Turk, more tyrannical than the Russian. Bread is the only weapon that can conquer him. Let us, then, load ships with this glorious munition, and in the name of our common humanity wage war against this despot, Famine. Let us in God's name 'cast our bread upon the waters,' and if we are selfish enough to desire it, we may recollect the promise, that it shall return to us after many days.

"If benevolence is not a sufficient incentive to action, we should be generous from common decency; for out of this famine we are adding millions to our fortunes. Every article of food, of which we have a superabundance, has been doubled in value by the very distress we are now called upon to alleviate.

"We cannot do less, in common honesty, than to divide among the starving poor of Ireland a portion of the gains we are making out of their misfortunes. Give, then, generously and freely. Recollect that in so doing you are exercising one of the most godlike qualities of your nature, and at the same time enjoying one of the greatest luxuries of life. We ought to thank our Maker that He has permitted us to exercise, equally with Himself, that noblest of even the Divine attributes, benevolence. Go home and look at your family, smiling in rosy health, and then think of the pale, famine-pinched cheeks of the poor children of Ireland, and I know you will give according to your store, even as a bountiful Providence has given to you—not grudgingly, but with an open hand; for the quality of benevolence, like that of mercy,

> "'is not strained;
> It droppeth as the gentle rain from heaven,
> Upon the place beneath: it is twice blessed:
> It blesseth him that gives and him that takes.'"

It is to be regretted that the remaining portions of this speech have not been preserved in their original beauty and purity.

They were rejected by Mr. Prentiss as having been spoiled by the reporter.

It is useless to state the effect of this noble and touching appeal upon the hearts of the generous citizens of New Orleans. They gave, and gave freely. The vessels were laden, and the fruits of this appeal were tasted by many a famished mouth; while the prayers and blessings that went up from thousands of woe-stricken hearts, for the unknown hand that had set this tide of generosity in motion, might have opened the gates of heaven to a fiend.

But if benevolence was a pre-eminent trait in the character of Mr. Prentiss, his magnanimity was equally conspicuous; while the fire of his ardor rendered him, at times, fierce in his denunciations, he was a generous foe, and quick to make the *amende honorable* when circumstances required. This quality was strikingly demonstrated during an unpleasant episode that occurred in 1848, the circumstances of which were as follows:

James Erwin, a man of high standing and the son-in-law of the great Henry Clay, during some pecuniary transactions in New Orleans was made the subject of a suit which involved the charge of fraud, and conduct of a very dishonorable character. Mr. Prentiss was retained for the prosecution of the cause, in which capacity he encountered the venerable and distinguished John R. Grimes, at that time the acknowledged head of the New Orleans bar. The contest between them was that of Æschines and Demosthenes, without their animosity. It was like the conflict of Cicero and Hortensius on the trial of Muræna. Mr. Prentiss was in wretched health at the time, which together with his pecuniary embarrassments rendered him, no doubt, unusually excitable and morose. These, conjoined with the vigor of the defence, caused him to transcend the bounds of his usual propriety so far as to assault the character and conduct of the defendant beyond the measure justified by the record. He is said to have been on this occasion extremely bitter and vituperative, and turning upon the defendant poured upon his head streams of the most caustic and withering animadversion, and on being interrupted by the counsel for the defence he proclaimed himself personally responsible for his language.

Soon after the close of the trial, Henry Clay Erwin, son of the defendant, a young man of only twenty years of age, and who resided in Kentucky, proceeded to New Orleans, and immediately challenged Mr. Prentiss to mortal combat. The challenge was peremptory. It gave him no chance for explanation, and left him no alternative but to fight or back down. Mr. Prentiss at first, in view of the circumstances and the tender years of his antagonist, listened to the persuasion of his friends, and hesitated ; but the young man nobly claimed the right to assume the quarrel of his father, and demanded an immediate answer. On the next morning Mr. Prentiss announced to his friends that he appreciated the feelings of "the gallant boy," as he called him ; that he could not deny him the right he claimed, and that he should accept the challenge ; yet he postponed the meeting for two weeks, for the purpose of arranging his private affairs, and in hope that the interval might afford an opportunity for an accommodation. This, through the exertions of mutual friends, was finally effected. The challenge was withdrawn, and Mr. Prentiss retracted the offensive language. After the adjustment, Mr. Prentiss addressed the following graceful and characteristic note to Mr. Erwin's second :

"Robert Johnson, Esq.

"Dear Sir : I am sincerely gratified that the difficulty between Mr. Henry Clay Erwin and myself has been amicably adjusted. From the beginning of this affair I have not entertained an unkind feeling toward Mr. Henry Clay Erwin. On the contrary, I honor and appreciate the sentiments by which he has been actuated, and under similar circumstances should probably have acted as he has done.

"I can now say frankly, what might heretofore have been attributed to improper motives : I disclaim all personal or improper feelings in the matter out of which this controversy arose, as well as all knowledge or approval of the newspaper publications in relation to my remarks. I respond fully to the high and honorable sentiments which have marked your course in this matter, as well as that of your associates, and it gives me pleasure to acknowledge the same."

The magnanimity of Mr. Prentiss on this occasion elicited a beautiful letter from Mr. Clay, expressing his joy at the result, and thanking him for his noble bearing towards his grandson.

Notwithstanding his natural amiability and gentleness of disposition, Mr. Prentiss, during his heated canvasses in Mississippi, found himself called upon to engage in two duels, both of which were fought with Hon. Henry S. Foote, who was long one of his most strenuous political opponents. It was on one of these occasions, when his pistol had snapped and Mr. Foote's ball had passed over his head, that, on taking his position for a second shot, he saw a little boy ascending a tree in his rear, for the purpose of obtaining a better observation, and turning to him he cautioned him of his danger, remarking that General Foote was shooting very wildly that day.

Notwithstanding his promptness to resent a personal insult, and his readiness to accept personal responsibilities when his honor was in the least involved, he harbored not a revengeful thought, and was as ready to forgive as to propitiate. But he was in disposition by no means a saint or puritan. He was more of a gay, dashing, reckless cavalier; more of a Cœur de Lion than a John Knox, and more of a John Smith than a John Carver.

His beautiful letters to his mother and sisters have already been referred to. They breathe the very essence of genuine affection, and exhibit the poised scales of the inner man. His love for his wife and children seemed unbounded; indeed, for many years before his death this seemed to be the only chain that bound him to the world, whose beauties he could so gorgeously depict. His health, which had long been feeble, became in 1849 so threatening as to occasion the utmost alarm to his friends. He became subject to a chronic dysentery, which was very much aggravated if not induced by his habits of life. This disease continued to grow at times more malignant until June, 1850, when he became so emaciated as to be unable longer to attend to any business, which he refused to abstain from so long as he was capable of the least exertion. His last effort at the bar was made in the defence of General Lopez, the Cuban patriot, before the United States court. In behalf of this individual, while he denounced his American abettors, his sympathies were warmly enlisted, and his exertions on the occasion utterly prostrated his last physical powers. He now consented to be

carried with his family to Natchez. Here he continued to rapidly decline, until the 1st day of July, 1850, when his spirit soared away to those beautiful realms from which he had always drawn his noblest inspirations, and the conception of whose beauties had modeled his grandest images.

The burial service was impressively performed by the venerable Bishop Green, of the Episcopal Church, who is still living to pronounce that last sad requiem of humanity, "Dust to dust, ashes to ashes." He was laid away by the side of the great river where he first stepped upon the shore of his splendid triumphs.

The death of Mr. Prentiss produced a deep and general feeling of regret throughout the country. Glowing eulogies upon his character and abilities were made at a meeting of the bar of New Orleans, and touching tributes were paid to his memory by the members of the profession in Natchez, Vicksburg, and Jackson; but as all these were of the same tenor and substance, the proceedings of the bar of Jackson only are introduced:

"Pursuant to notice, the members of the Jackson bar assembled in the court-room of the chancery court, July 15th, 1850, to take some measures to express their sentiments relative to the decease of the Hon. Sergeant S. Prentiss.

"On motion, Colonel J. F. Foute was called to the chair, and L. V. Dixon appointed secretary. After a few remarks from the chair more expressive of the object of the meeting, on motion, William Yerger, John I. Guion, Caswell R. Clifton, and Daniel W. Adams, were appointed a committee to prepare a suitable preamble and resolutions, who reported the following, which were unanimously adopted:

"The members of this bar have learned with unfeigned sorrow that their former companion and brother, the Hon. Sergeant S. Prentiss, has departed this life. For upwards of fifteen years Mr. Prentiss was a citizen of the State of Mississippi, and during that period he established a reputation for legal learning and ability, for high-souled and chivalrous patriotism, and for spotless integrity and unsullied honor, which will endure as long as such qualities and virtues are cherished among

us. As an orator, the reputation of Mr. Prentiss is national. As a lawyer, the judicial annals of our country have been illustrated by no brighter name or loftier intellect. As a politician, he received the unlimited confidence and support of one great party, while his political opponents accorded to him unquestionable integrity of purpose and sincere devotion to his country. It is a source of pleasure and of pride to his friends to recount these things. Yet to the members of the bar, who knew him well and intimately, his social qualities, and the generous impulses of a heart which always beat responsive to every sentiment of honor, friendship, manhood, and truth, render his name more dear than the brightest achievements of his intellect. Therefore,

"1. *Resolved*, That as an orator, a statesman, and a jurist, the fame of Mr. Prentiss will adorn the brightest page in the history of the Republic.

"2. *Resolved*, That the name of Prentiss is identified with the history of Mississippi, and his memory will be forever cherished among the dearest and worthiest of her sons.

"3. *Resolved*, That in the death of Mr. Prentiss the legal profession has lost one of its brightest ornaments, and the members of this bar have lost a friend, endeared to them by every manly and social virtue which could add to the enjoyment of professional intercourse.

"4. *Resolved*, That, as a tribute to the memory of the deceased, the members of this Bar will wear the usual badge of mourning for thirty days; and that John I. Guion, Charles Scott, and Daniel Mayes be appointed a committee to present the foregoing preamble and resolutions to the supreme and chancery courts, and ask that they be entered on the minutes of each of said courts.

"5. *Resolved*, That John I. Guion be requested, at the January session of the High Court of Errors and Appeals, to deliver an address commemorative of the distinguished abilities and the exalted private virtue of the deceased.

"6. *Resolved*, That a copy of these resolutions be forwarded to the family of Mr. Prentiss, with the assurance of the sincere

condolence of the members of this bar in their great bereavement.

"7. *Resolved*, That the city papers be requested to publish these proceedings.

"J. T. Foute, *President.*

"L. V. Dixon, *Secretary.*"

At the opening of the session of the United States District Court in New Orleans, in November, 1850, the District-Attorney presented the resolutions of the bar of that city in reference to the death of Mr. Prentiss, and moved that they be placed upon the records of that court, upon which Judge McCaleb delivered the following pathetic eulogy :

"In granting the motion just made by the District-Attorney, I shall be excused, I trust, if I embrace the occasion to make a few remarks.

"Amid the painful regrets we experience at the loss of Mr. Prentiss, we can still dwell with a melancholy pleasure upon his many noble qualities of head and heart. As the learned, able, and eloquent advocate, he was at all times the object of our warmest admiration ; as the kind and confiding friend, the honorable and chivalric gentleman, he had secured our affection and lasting regards. In our sorrowful reflections upon his departure from the active scenes of life, we can truly say that a lawyer of extensive and profound acquirements, an orator of rare powers of argumentation and of most brilliant fancy, a man of unsullied honor, a patriot of ardent devotion and undaunted courage, and a friend whose generosity knew no bounds, has prematurely passed from the theatre of his usefulness and his fame.

"The intellectual endowments of Mr. Prentiss presented a remarkable example in which great logical powers and the most vivid imagination were happily blended. With all his readiness in debate, he never failed, when an opportunity offered, to enter into the most laborious investigations to obtain the mastery of a subject. If he frequently sought to amuse, he rarely failed at the same time to instruct an audience. The rapidity with which he seized the strong points of a case, added to his un-

tiring assiduity, rendered him at all times a most formidable adversary.

"In happy exhibitions of extemporaneous eloquence, in striking illustrations, by a rapid and harmonious succession of brilliant metaphors, he was rarely if ever excelled. But those who regarded him as a merely eloquent declaimer were widely mistaken in their estimate of his powers. His honorable zeal in the assertion of the rights of a client, his high professional pride, his respect for an adversary and the court, prompted him, in all cases of importance, to a diligent and careful preparation. His own wonderful powers of illustration were at all times supported by the solemn mandates of authority; and the facility with which he was wont to call to his aid the thoughts or effusions of others, proves him to have been a student of an extraordinary memory and of unremitting diligence. His ideas of intellectual excellence were formed by an attentive study of the best models; and those who enjoyed with him the pleasures of social intercourse are aware with what humility and veneration he paid his devotions to the shrine of ancient genius. No man, with all his admiration of modern excellence, was more prompt in according superiority to those master spirits of antiquity whom modern genius, with all its boasted progress, has yet signally failed to outstrip in the race of true greatness and glory.

"It was in 1845 that Mr. Prentiss removed from the State of Mississippi to this city, with a view to a permanent residence, and for the purpose of pursuing the practice of his profession. He came with a brilliant reputation as a lawyer and an orator; and I think it will be admitted by every candid mind that the public voice in other sections of the Union was not extravagant in its estimate of his abilities. His almost unprecedented success as an advocate before the tribunals of Mississippi; his eloquent efforts in the political arena, before large popular assemblages in different parts of the country, and in the hall of the House of Representatives of the United States, had gained him universal applause, and indisputably established his claims to the possession of talents of the highest order. It was my fortune to be present at the Capitol at Washington in 1838, during the long and exciting debate which arose out of the Mississippi con-

tested election. The most prominent champions who entered the list on that interesting occasion were Mr. Prentiss himself, then claiming his seat, and Mr. Legare, the distinguished jurist and scholar from South Carolina. It is neither my province nor desire to decide to whom belonged the chaplet of victory. It is sufficient to say that the powerful and brilliant efforts of Mr. Prentiss, in the defence of his trying and important position as challenger of all comers, received the most enthusiastic encomiums from political friends and foes; and I take pleasure in testifying that from none did I hear a more unqualified expression of approbation than was given to me subsequently, in a social interview, by the generous and accomplished antagonist to whom I have alluded.

"The speech of Mr. Prentiss on that occasion was published in the journals of the day, and is among the very few of his remarkable exhibitions of argument and oratory remaining for the admiration of posterity.

"We are told by Macaulay, in his elegant review of the writings of Sir William Temple, that 'of the parliamentary eloquence of the celebrated rivals (Shaftesbury and Halifax) we can judge only by report. . . . Halifax is described by Dryden as

> "'Of piercing wit and pregnant thought,
> Endowed by nature and by learning taught
> To move assemblies.'"

Yet his oratory is utterly and irretrievably lost to us, like that of Somers, of Bolingbroke, of Charles Townsend, of many others, who were accustomed to rise amid the breathless expectation of senates, and to sit down amid reiterated outbursts of applause. Old men, who had lived to admire the eloquence of Pulteney in its meridian, and that of Pitt in its splendid dawn, still murmured that they had heard nothing like the great speeches of Lord Halifax on the Exclusion Bill.'

"These observations on what must ever be regarded as most important omissions in the annals of parliamentary and forensic eloquence in England, remind us forcibly of similar omissions in our own history—omissions the more to be regretted because

they deprive us forever, as in the case of our lamented friend, of the noble sentiments luminously arrayed, of those with whom for years we have daily enjoyed the delights of social intercourse.

"In the case of Mr. Prentiss, the omission is the more unaccountable, and perhaps the more unpardonable, because of the great advantages he possessed of a finished education, and of his extraordinary readiness as a writer as well as a speaker. It was indeed a source of regret among his countless admirers that, with all his professional pride, with all his aspirations for professional distinction, and all his ambition for victory in the political arena, he should have manifested such utter indifference to posthumous fame. He was sensitive to everything relating to his character as an honorable man; he was careful to preserve untarnished the fair escutcheon of an honorable name; yet in the great intellectual conflicts in which he was so frequently engaged he was content with the contemporary applause so bountifully bestowed, and looked no farther. Posterity indeed will never be able to appreciate his intrinsic worth; but his powerful logic, his brilliant wit, the radiant coruscations of his fancy, his keen sarcasm and his melting pathos, will be treasured in the grateful recollections of those who were permitted to witness their effect. They will long be remembered as the

> "'Fruits of a genial morn and glorious noon,
> A deathless part of him who died too soon.'

"I have alluded to the professional pride of Mr. Prentiss. No man regarded with more profound veneration the luminaries of the law, and no man was more emulous of their triumphs. He felt that the science itself presented the noblest field for the exertion of the intellectual faculties, and was deeply sensible of the high responsibilities assumed by all who embark in it as a means of acquiring a livelihood. He treated with scorn the vulgar prejudice against it, founded upon the faults or delinquencies of its unworthy members. It was the profession which, in his opinion, furnished the materials to form the statesman. It was the profession from which the patriot could provide the most efficient weapons to vindicate the freedom and honor of

his country. The boldest and most devoted champions of popular liberty, in every civilized age and in every civilized clime, were, in his opinion, to be found in the ranks of the legal profession. He believed that in our own country they afforded one of the strongest bonds of the National Union. His sentiments on this subject were delivered with characteristic energy and zeal, and were suggested by the request with which he had been honored, by the Law Association of Harvard University, to deliver the address at its annual celebration. I can never forget the feelings of gratified pride he expressed on the reception of that invitation, or the emotions of regret he betrayed at being compelled by his feeble health to decline it. Had his physical strength been adequate to the task, Petrarch in the solitudes of Vaucluse never responded with a prouder enthusiasm to the summons from the metropolis of the world, to receive in its capital and from the hands of a Senator of Rome the laurel crown as the reward of poetic merit, than would our orator have obeyed the request of the members of his noble profession in that ancient university. But the triumph of Petrarch was not reserved for our friend. His melancholy fate more solemnly reminds us of that other devoted child of Italian song, who had 'poured his spirit over Palestine,' and whose summons to the honors of the laurel wreath was but a summons to his grave.

"We feel that it was but yesterday we beheld our friend here in this hall, in the ardent and energetic discharge of his professional duties, with a countenance pale and emaciated, but radiant with the fire of genius; with a frame feeble and exhausted from the ravages of disease, but with a spirit undaunted, a mind ever luminous, and exhibiting in every effort its almost superhuman energy. His mighty soul seemed 'swelling beyond the measure of the chains' that bound it within its frail tenement. His surrender at last to the King of Terrors was the result of another victory of genius over a favorite son, and forcibly recalls the lines of the poet, in allusion to the death of a kindred spirit:

"'Twas thy own genius gave the final blow,
And helped to plant the wound that laid thee low;

So the struck eagle, stretched upon the plain,
No more through rolling clouds to soar again,
Viewed his own feather in the fatal dart,
And winged the shaft that quivered in his heart.'

"Amid the excitement of the forum he was unconscious of the rapid decay of the organs of life. Heedless alike of the solemn admonition of friends and the increasing debility of an overtasked and broken constitution, he continued, day after day, to redouble his exertions, and seemed to regulate his physical activity by the mighty energies of a mind that scorned all sympathy with the feeble frame on which it was dependent for support. One of the most important arguments made by him before this tribunal—I allude to that in the case of the heirs of Pultney *vs.* the City of Lafayette—was delivered from his seat, his declining health rendering it impossible for him to stand in the presence of the court; and yet I may with confidence appeal to his able and generous antagonist on that occasion, to bear testimony to the systematic arrangement and masterly ability with which every argument, and all the learning that could tend to the elucidation of the important questions involved, were presented to the court.

"I have thus, gentlemen of the bar, in a manner perhaps somewhat unusual, though I trust not inappropriate to the occasion, availed myself of the opportunity afforded by the presentation of your eloquent resolutions to mingle my own feeble voice with the strains of eulogy which have already been heard, in heartfelt tributes to private and public worth; to add my own humble offering at the shrine of genius; to hang my own garland of sorrow over the tomb of a long-cherished friend:

"'To mourn the vanished beam, and add my mite
Of praise, in payment of a long delight.'"

The close of this touching tribute of Judge McCaleb seems indeed a fit point to terminate this sketch; yet I will add a few passages from an article that appeared in the New Orleans *Delta* at the time of the death of Mr. Prentiss, which sparkle with an eloquence and genius strikingly kindred to that which they

seek to picture and commemorate. It was from the pen of Mr. Walker, then editor of that paper, and a stanch political opponent of Mr. Prentiss:

"One of the most gifted men this country has ever produced, has fallen, in the very meridian of his genius and usefulness! Sergeant S. Prentiss is no more! Almost friendless and unknown, he made his appearance at the bar of Mississippi, and soon a weak and debilitated boy, with gentle lisp, and supported by a sustaining cane, was seen stealing away the technical hearts of stern judges, and weaving seductive tales in the honest ears of sworn jurymen. Resistless as the penetrating breeze, his juvenile eloquence searched every avenue of thought and feeling. The classic page and the varied mass of modern literature were conveniently stored away in the massy caverns of his broad and fertile intellect. A close train of didactic reasoning on the most abstruse legal topic was lit up with the pyrotechnic fires of his fancy. The most ordinary incidents of life, the merest commonplaces, were caught up on the wings of his imagination and blended and effectively commingled, in his illustrative oratory, with the boldest and most gorgeous metaphors.

"With such talents, it will excite no surprise that he met with the most brilliant success at the bar. Located in Vicksburg, almost at a bound he leaped into the very highest position at the bar of Mississippi.

"Few men in this country have ever risen more rapidly, or sustained themselves more successfully. Of Mr. Prentiss's career as a politician we need not speak: it will be found in the history of the country. His speeches in Congress secured him the most extended reputation as an orator. But, in truth, he had no taste for political life. He soon returned to his favorite arena—the bar—and resumed his splendid practice. The financial troubles of 1836 fell upon Mr. Prentiss with great severity. He lost by them a princely fortune. In consequence of these reverses he removed to this city, as affording a larger sphere for the exercise of his talents. Here he immediately took his position among the foremost of our lawyers. Many gentlemen of the bar, of great eminence in States where the common law

prevails, had not sustained here the reputation which they brought with them. Mr. Prentiss was an exception to this remark. The remarkable quickness and analytical power of his intellect enabled him in a very short time to master the rules and theory of a system of jurisprudence quite different from that in which he had long been trained. He soon achieved a position at the bar of New Orleans as prominent as that he occupied in Mississippi.

"Nor was his mind 'cribbed, cabined, and confined' within the narrow limits of a mere professional life. He always identified himself with every project of patriotism, benevolence, charity, or literature that was agitated in his vicinage. A monument to Franklin, or a sympathetic appeal in favor of struggling Hungary, or a donative response to the tearful orphan, or a commemoration of the birthday of the Bard of Avon, would equally fire his soul and syllable his tongue. He possessed one of the most highly endowed intellects we ever knew. His memory was singularly retentive, so that he could repeat whole cantos of Byron on the moment. His logical faculty was very acute and discerning. It was often the complaint of the court and his brother lawyers that he would argue a case all to pieces. He would penetrate to the very bottom of a subject, as it were, by intuition, and lay it bare in all its parts, like a chemist analyzing some material object, or a surgeon making a dissection.

"His reading was full and general, and everything he gathered from books, as well as from intercourse with his fellow-men, clung to his memory, and was ever at his command.

"But his most striking talent was his oratory. We have never known or read of a man who equalled Prentiss in the faculty of thinking on his legs, or of extemporaneous eloquence. He required no preparation to speak on any subject, and on all he was equally happy. We have heard from him, thrown out in a dinner-speech or at a public meeting, when unexpectedly called on, more brilliant and striking thoughts than many of the most gifted poets and orators ever elaborated in their closets. He possessed a rare wit. His garland was enwreathed with flowers culled from every shrub or plant, and from every clime. And

if at times the thorn lurked beneath the bright flower, the wound it inflicted was soon assuaged and healed by some mirthful and laughter-moving palliative.

"His heart overflowed with warm, generous, and patriotic feelings. He was as brave and chivalrous as Bayard, as soft, tender, and affectionate as a loving child untainted by the selfishness of the world. His bosom was the home of honor, and all narrow, selfish feelings were foreign to his nature.

"It is proper that such a mind should thus glide from these scenes of worldly trouble. It is just that a bright exhalation, which has shone so brilliantly, should disappear thus suddenly ere it begins to gradually fade and flicker; that the fire of so noble an intelligence should not diminish, and slowly go out amid decrepitude and physical decay; but that, like the meteor shooting across the heavens, illuminating the earth, it should sink suddenly and forever into the earth from which it sprung."

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## JOHN I. GUION.

The subject of this sketch was born and reared in Adams County, Mississippi. His parents were natives of South Carolina, and were of Huguenot origin. Mr. Guion was educated in Tennessee, and studied law at Lebanon in that State. Here he met William L. Sharkey, and here a friendship was contracted between them which subsisted throughout their lives. On returning to Mississippi they entered into a copartnership for the practice of law, in Vicksburg, which association existed until Judge Sharkey was raised to the circuit bench, in 1832. Mr. Guion then united in practice with the celebrated Sergeant S. Prentiss, who was then approaching the height of his forensic fame, and this copartnership continued until 1836. During that year the Legislature established an inferior court of exclusive criminal jurisdiction in the counties of Warren, Claiborne, Jefferson, Adams, and Wilkinson. It was styled the "Criminal Court," and had concurrent jurisdiction with the circuit courts of these counties over all crimes, misdemeanors, and matters of a criminal nature. Mr. Guion was appointed

the first judge of this court, over which he presided about a year, and then resigned. Judge Guion now resumed the practice of law, and his old partner, Mr. Prentiss, having been elected to Congress, he associated with him William C. Smedes.

In 1851 Judge Guion was President of the Mississippi Senate, and on the resignation of Governor Quitman, in February of that year, became, by virtue of his office, acting Governor of the State, which position he held until the next Governor-elect was inaugurated, in 1852.

On his retirement from the executive chair Judge Guion was elected judge of the Circuit Court, which seat he occupied until the time of his death, which occurred in 1855.

Judge Guion was one of those characters whose lustre glows with a serene and steady light, and which was never shadowed by the brilliancy of his eminent professional associates. While the genius of Mr. Prentiss dazzled with its gorgeous flashes, that of Judge Guion enchanted admiration, not so much by its magnitude as by the fixed mellowness of its effulgence.

As a judge he was able, upright, and pure, readily comprehensive of every point upon which a proposition hinged, liberal in his interpretation of law for the advancement of justice, and watched the poise and inclination of its scales with a jealous and conscientious eye.

As a lawyer Judge Guion was fully worthy of the eminent distinction he enjoyed. Thoroughly versed in all the principles of the science, he was proficient in all the functions of the profession; and while he cannot be said to have been assiduous in application, his great ability and comprehensive views precluded the necessity of that constant labor which success requires of ordinary minds. He had in early life acquired a thorough knowledge of the rudiments and fundamental principles of law, and these he so wove in with his own judgment and perceptions that they constituted a lucid stream which continually flowed through his mind, and was constantly fed by the estuaries of his superb genius.

But while his discussion of legal questions was marked with great adroitness and force, the power which Judge Guion could at all times exercise over the minds of the jury constituted,

perhaps, the most prominent feature of his forensic eminence. His great integrity and love of justice, his kindness of heart, which continually beamed in his face, lurked in every tone of his voice, and gave air to every act and gesture of the man, were even superior in effect to the charms of eloquence, in which he was by no means deficient.

Judge Guion was a great favorite with his brother members of the bar, and was popular with all classes of the people. He displayed always a warm and attractive cordiality, a sincere suavity of manner, and a courtesy that gushed from the pure fountains of benevolence. Indeed, kindness was the controlling attribute of this great and good man—a man whose abilities were well worth the fee of fame, and whose many endearing traits of character entitle his name to be entwined with wreaths of living green in the memory of every Mississippian who delights to cherish and honor the noblest virtues of humanity.

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## JOSEPH HOLT.

Joseph Holt was born in Breckenridge County, Kentucky, in the year 1807. He received a thorough and finished education in the college at Danville, and was thoroughly trained for the profession of law. He was admitted to the bar at Elizabethtown in 1828, soon attained a high rank as a lawyer, and served with distinction as district-attorney there, previous to his emigration to Mississippi. He removed to the latter State in 1837, and settled first at Jackson, where he resided a short time, and then removed to Vicksburg. He brought with him to Mississippi a high reputation both as a lawyer and politician. He had taken a prominent part in the race of Richard M. Johnson for the Vice-Presidency, and in the National Democratic Convention of 1836 had delivered a speech that gave him great credit, and which was read with admiration throughout the Union.

With such a prestige his reception in Mississippi was of course warm and flattering, and which, with his unassuming dignity of manners and great ability as a lawyer, placed him at

once in the front rank of the profession, and he became one of the brightest lights that ever shed lustre upon the bar of Mississippi.

Mr. Holt was gifted with a mind of brilliant powers. His perceptions were remarkably acute and penetrating; his comprehension as vast as the range of fact and the field of jurisprudence; and in the discussion of general principles of law he had no superior at the Mississippi bar. His mild and gentle manners, calm demeanor, and dignified bearing, conduced greatly to the triumphant effect of his logic. His accomplishments as a forensic orator were of the most forcible and striking character. Clear and comprehensive in the statement of his cases, well fortified at all times by precedent and analogy, lucid and logical in his arguments, fair and exact in his summation, with a ready and unlimited command of language, his eloquent and stirring perorations bore away the sympathy and judgment of courts and juries into an irresistible current of conviction.

Mr. Holt was engaged in many of the most important cases ever brought before the courts of the State, and was frequently the opponent of Mr. Prentiss, of whom he was, in some way, considered a prominent rival. Indeed, Mr. Holt had many friends and admirers who claimed for him the meed of superiority. He was a strong advocate of Democracy, while Mr. Prentiss was a Whig, and this caused, no doubt, a claim to be advanced by their respective friends which neither of the eminent counsel advocated. They were opponents in the noted case of Vick *et al. vs.* the Mayor and Aldermen of Vicksburg. In this case Newit Vick, who owned the soil where Vicksburg now stands, proceeded in 1819 to lay off lots for the future city, leaving the space between the front street and the river as a common for the use of the future inhabitants, and according to this plat began to dispose of the lots, but died soon after. The town was built pursuant to this plan, but in 1836 the heirs of Vick laid claim to the "common." The board of Mayor and Aldermen filed a bill in chancery to quiet title in the city, claiming that the property had been dedicated by Newit Vick to the public use.

Mr. Holt was engaged as leading counsel for the complain-

ants, and Mr. Prentiss for the defendants. The suit involved more than half a million of dollars, and was managed on both sides with the most consummate skill and ability. The Chancellor decided in favor of the city, upon which Mr. Prentiss appealed to the High Court. The able arguments of the counsel were written, and are found reported in full in 1 Howard, 379. In this case the whole question of dedication of easements and public uses was thoroughly and ably argued. The question is an interesting and important one, from the fact that it involves many conflicting precedents, and that there has been no fixed line drawn between express and implied dedications.

The High Court reversed the decree of the Chancellor, and dismissed the bill and injunctions, upon which Mr. Holt took the case to the Supreme Court of the United States, which in turn overruled the decision of the High Court and sustained the decree.

The arguments in this case will well repay the close study of any practitioner.

After having remained about ten years at the Mississippi bar, and having reaped an ample fortune from his practice, Mr. Holt returned to Kentucky, and took up his residence in the city of Louisville ; soon after which he went abroad, visiting various countries in Europe, and on his return to the United States he was, in 1857, appointed by President Buchanan as Commissioner of Patents at Washington. In 1859 he became Postmaster-General, and on the resignation of John B. Floyd, in 1860, he was placed for a short time at the head of the War Department.

In 1862 he was appointed Judge Advocate General of the United States army, and in that capacity took a prominent part in the trial and execution of the unfortunate Mrs. Surratt, the first woman ever executed by authority of the United States Government. For his connection with this matter, whatever may have been his official attitude and obligations, he has received, and no doubt will always receive, the disapprobation of all fair-minded mankind.

After this transaction, and the expiration of his office as Judge Advocate, Mr. Holt retired from public view, and has since lived

in obscurity. It is hard to conceive that the amiable Joe Holt of the Mississippi bar was the merciless Judge Holt of the Surratt trial.

Truly may it be said, in view of him, that no man's life is made up until his death. Whether it be from a higher degree of conscientiousness or not, yet it is a fact worthy of note that Judge Holt is the only person immediately responsible for the issue of that trial who has not come to an unfortunate end; and whatever may be his official justification, his name will be forever connected with an event that will remain a stigma upon the Government, which all the waters of Jordan can never cleanse.

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## VOLNEY E. HOWARD.

The subject of this sketch was a native of the State of Maine, where he received a finished education, and was thoroughly prepared for the profession of law. When quite a young man he determined to seek for fortune and fame in the great Southwest, and turning his steps thither he arrived at the capital of Mississippi about the year 1830, and immediately entered upon his profession, in which he so rapidly rose in the confidence and esteem of the bar and the people that, in 1837, he was chosen reporter of the decisions of the High Court of Errors and Appeals.

His reports are distinguished for regularity and systematic arrangement, and his captions and syllabuses are lucid, comprehensive, and exact. He also took a prominent part in the politics of the day, and was for several years editor of the *Mississippian*, a newspaper published at the capital, and the leading Democratic organ of the State. He was a vigorous and caustic writer, and attacked with scathing rebuke and sarcasm every measure which he deemed false to the interest and welfare of the people, while he maintained with inveterate alacrity and eloquence the true principles of his party.

His paper wielded a great influence throughout the State, and the force and ability with which he inculcated his views

caused them to be deeply impressed both upon public policy and private enterprise.

Mr. Howard was a man of undoubted ability, and a lawyer of no ordinary capacity. Like Mr. Prentiss, he came to Mississippi without means and without friends, and with the suspicion and prejudice existing at that time in the minds of the Southern people against all natives of New England staring him in the face, and which nothing but the most amiable character, the most upright conduct, and eminent merit could have so soon and so completely dispelled as to admit him to the full confidence and to the warmest support and patronage of the people.

About the year 1847, Mr. Howard, allured by the spacious fields of that rising empire, removed to the State of Texas, and in 1850 was a member of the Texan Legislature, in which he took an active and able part in the affairs of the State, and in the interest of the Missouri Compromise measures, which were at that time agitating the waters of national politics. In consequence of which he was sent by the President of the United States to California, on a mission of importance regarding the organization of that State, where he established his residence, and acquired much additional reputation in his profession.

By untiring industry and unswerving devotion to duty he surmounted difficulties that would have deterred less resolute spirits from the pursuit of fame, and, bursting from the gyves of every shackle of circumstances, his abilities carried him rapidly up the ladder to professional and political distinction.

## ANDERSON HUTCHINSON.

Anderson Hutchinson was a native of Greenbrier County, Virginia, where he received a common-school English education, most of which he acquired at intervals while assisting his father in his office, which was that of clerk of the county courts. Here he also acquired some practical knowledge of legal forms and processes, which was, no doubt, the foundation of those habits of accuracy and that expertness in the preparation of legal documents, which characterized his practice.

On reaching the age of manhood Mr. Hutchinson emigrated to Knoxville, Tennessee, where he was admitted to the bar, and soon acquired considerable reputation. This he achieved by means of perseverance and a vigorous devotion to the profession, as well as by the native faculties of his mind, which the very touch of learning kindled into a flame of genius. After practising some years at Knoxville, he removed to Huntsville, in North Alabama, and there encountered, with increasing reputation, the eminent lawyers of that noted bar. He then removed to Mississippi, and established his residence in the town of Raymond, in Hinds County, about the year 1835.

In 1840 he published, in conjunction with Volney E. Howard, a Digest of the laws of Mississippi, for which the Legislature allowed him $12,000, purchasing fifteen hundred copies, and in 1848 he published his Mississippi Code. This is undoubtedly a work of great merit, and required an incalculable amount of labor as well as great ability in its preparation. It is not a digest, nor revision, nor a compilation of the statutes at large, but an analytical compilation, excluding all enactments not in force except those which were necessary to explain some right originating from them, or requisite for affording an insight into existing statutes.

The plan of this work conforms to the admirable analysis of Blackstone's "Commentaries," and in its arrangement presents a striking novelty as well as an exhibition of marked genius.

This work gave entire satisfaction, and the Legislature ordered two thousand copies to be distributed among the officers of the State.

About the year 1850, Mr. Hutchinson removed from Mississippi to the State of Texas, and there acquired such an exalted reputation as a lawyer and a man of integrity that he was made one of the judges of the Supreme Court of that State. He had been but a short time on the supreme bench when, while sitting on the trial of an important case in the city of San Antonio, before the boundary lines between the United States and Mexico had been fully established, a band of armed Mexicans rushed into the town, captured the court-house, and carried away the judge and other officers of the court as prisoners to the castle of Perote. Here he was closely confined, and subjected to great hardships. This act caused a thrill of indignation throughout the country, and the American minister at the city of Mexico, the celebrated Waddy Thompson, promptly demanded his release and reparation for the outrage from the Mexican Government. His release was effected, and satisfactory reparation made.

Judge Hutchinson then returned to Mississippi, and renewed his practice in copartnership with Henry S. Foote.

As a lawyer Judge Hutchinson owed his success and celebrity more perhaps to an accurate and laborious preparation of his cases than to any pre-eminent feature of ability. He was deeply read in the law, and by application and indefatigable industry availed himself fully of his extensive knowledge and good judgment. The accuracy of his pleadings, his uniform urbanity and simplicity of manners, his fidelity to his clients, and the force of character which he brought to bear upon a cause, all contributed to his great popularity and success. He possessed an extraordinary degree of promptness, decision, and energy, which, with a sincere kindness of heart and love of justice, enlisted for him a confidence which no power could shake. He died in the year 1853.

## DANIEL MAYES.

Daniel Mayes was a native of Kentucky, and had achieved success and reputation at the bar of that State prior to his removal to Mississippi. He came to this State about the time of the exodus of the Chickasaws and Choctaws, an event which occasioned a renewed tide of immigration of all classes of persons to occupy the lands vacated by the Indians. He had also filled with distinction a chair as professor of law in the Transylvania University, and found at the bar of Mississippi many of the younger members whose legal knowledge was due to his instruction, and who entertained great respect for his personal qualities, and a profound reverence for his professional abilities. He established his residence at the capital of the State, and immediately entered upon a highly successful and brilliant career at the Mississippi bar.

His knowledge of law was scientific and thorough, and he was a master of the intricate system of common-law pleading, which, notwithstanding the statutory simplification, afforded him great advantage in the preparation of his cases and in the presentation of special issues. His reputation, dignity of character, and urbanity of manners, soon engaged a confidence which caused him to be called in the most important cases, and to become involved in the most distinguished competition. Yet his learning and legal ability in every instance achieved the full measure of expectation.

His arguments were characterized by a depth of research, an astuteness of reason, and a logical exactness difficult to refute or even to palliate under ordinary circumstances. Every volume of reported decisions responded to his call for precedent, and his acute observation and keen comprehension extracted authority from the most subtle analogies.

His argument in the case of Jane B. Ross *et al. vs.* Vertner *et al.*, 5 Howard (Appendix), is a brilliant exemplification of these traits.

In this case the superiority of the right of inheritance over that of devise is luminously discussed and triumphantly vindicated. He contends that the right of inheritance is founded in

nature as well as in the laws of the land; that it is of higher antiquity, as recognized and established by human law, than the testamentary right; and that the testamentary right, so far as it exists by human law, was instituted not because of its conforming to human reason or right, but to prevent certain abuses growing out of the original, indefeasible nature of the right of inheritance, such as the disobedience of children and the neglect of filial duties, and to prevent "the robust title of occupancy from again taking place."

He ridicules the use made in the arguments of the Chancellor, of the parenthetical expression of Sir William Blackstone, that the power given to a dying person of continuing his property by disposing of his possessions by will is "*a kind of secondary law of nature*," and adds: "This phrase of Blackstone, '*a kind of secondary law of nature*,' is one of the few expressions to be found in that very accurate and learned author which conveys no idea to the mind. I defy any one to fix a definite and distinct idea to, and give a definition of the phrase, '*a kind of secondary law* of nature.' We can see what the author meant, by resorting to the preceding words, but otherwise these words are a mere empty sound. Blackstone himself considered the phrase of no import, and therefore threw the words into parenthesis as not affecting the sense of, or being important to, the paragraph; and yet the Chancellor lays hold of this loose parenthesis, thrown into a sentence rather by way of flourish than to illustrate the subject, and which evidently has no reference to the position which Blackstone was maintaining, and makes that loose expression the turning point of his opinion."

This able and elaborate argument of Mr. Mayes will well repay careful perusal and reflective study. Yet in reply to the argument of the opposing counsel, that a person may, unless prohibited by law, direct in his will any disposition of his property after his death which he could have legally made during his lifetime, it seems to the writer that he might have properly taken a position which he hesitated to assume—namely, that the right of posthumous dominion is not coextensive with the right of disposing of one's property whilst living. If the words "may direct in his will" imply an obligation upon the law to

aid in executing the privilege granted, without which it would be of no avail, it is certainly subject to restrictions which have no power over the exercise of personal control. A man may take his property to the middle of the Atlantic, and there empty it into the sea, without legal restraint, but should he direct such a disposition of it by his will—an institution which derives its origin and power of operation only from positive law—would that law lend its aid to the enforcement of such a heartless behest? or would it not rather intervene to frustrate such an impolitic destruction, notwithstanding that all the powers of metaphysics should combine to establish the sanity of the testator?

A man may make many dispositions of his property, in their nature contrary and repugnant to all reason, provided he affects neither the rights nor the morals of others, but which the law would not sanction or promote by giving effect to an unreasonable bequest; and hence it is not true that the right of testamentary control of property is as comprehensive as the right of disposition during life, and neither has that sacred sanction which gives force to the laws of equitable inheritance.

Mr. Mayes possessed an astuteness and sagacity of precaution which gathered every legitimate and honorable means within the spacious limits of his resources, and he was as fertile in method as in the invention of expedients. It is related of him that he was once employed in the defence of an unfortunate man who had unintentionally killed a woman, who was residing with him, by a stroke on the head while she was in the act of inflicting great bodily harm on his sick wife, and in order to save his client from a verdict of murder it became necessary to introduce the daughter of the latter as a witness—a little girl of ten years, who was the only witness to the circumstances; but the tenderness of her age and her ignorance suggested the apprehension that she would not be able to stand the ordeal to which she would be subjected upon cross-examination.

Under these circumstances, Mr. Mayes procured a continuance of the case, and ordered the little girl to be placed at school and thoroughly instructed as to the nature of truth and the obligations of an oath. The plan was successful, and at the next term

of the court the little witness detailed the circumstances of the killing with a firmness and consistency that baffled every attempt to impair her testimony, and saved her father from the gallows.

These circumstances were well calculated to kindle every spark of his genius, and his speech on this occasion is said to have been a most brilliant combination of argument and eloquence, of pathos and lucidity, and a depth of research that greatly increased his already distinguished reputation as an advocate.

As an orator Mr. Mayes is said to have possessed a round measure of grace and polish. Masterly in his command of language, yet unostentatious in his style, he valued more the expressions of forcibility than the flourish of rhetorical ornamentation; hence his elocution was calm, terse, and vigorous; his phraseology accurate, and his choice of words apt and felicitous.

His manners were exceedingly placable and winning, and his sense of professional propriety nice almost to a degree of fastidiousness. Quick to assert his own dignity, he took no unseemly liberties with the feelings and sensibilities of others, but a uniform politeness and calm courtesy pervaded all his actions, and characterized both his professional and social intercourse.

As a man he was warmly sensible to the feelings of philanthropy and benefaction. He was kind, charitable, and benevolent, and always ready to aid any enterprise for the advancement of the public good or the relief of individual suffering.

That such a man should have enjoyed the highest esteem as a lawyer, a scholar, a citizen, and a man, and that he should have gone down to his grave with the regrets of his fellow-citizens and the benisons of hallowed memories, is but in conformity with the experience of mankind, the dictates of humanity, and the will of Heaven.

## WILLIAM E. ANDERSON.

It seems to be a characteristic of human nature, particularly in its less cultivated state, to associate great deeds and eminent qualities of the mind with great physical strength. We naturally expect that which is grand in nature to inspire us with the feeling of sublimity, and this expectation is readily transferred to the persons of famous individuals. The Scythians conceived Alexander the Great to be some mighty giant whose very presence would inspire the feelings of awe and reverence, and were overwhelmed with surprise when a man of less than the ordinary size was pointed out to them as the great conqueror. And even more prone are we to expect great mental qualities from a powerful physical organization, notwithstanding that we may remember that the mighty Achilles, after slaying the great Hector, succumbed to the comparatively feeble javelin of Paris, and that the fragile sling of the youthful David was more effective than the ponderous beam of Goliath. Whether it may be ascribed to an elevated state of mind kindred to that produced by sublimity, or to the influence of some subtle mesmeric agency, it is certain that a portly physical aspect and stentorian tone of voice, when there is no apparent effort to daunt or overawe, add greatly to the force of an orator and advocate; and when these are really combined with great powers of intellect the pre-eminence is complete.

Such was in a great measure the composition of the character depicted in this sketch.

William E. Anderson was a native of Virginia, and of the county of Rockbridge, and had achieved reputation as a lawyer in the State of Tennessee prior to his advent to the bar of Mississippi, about the year 1835. He possessed a vigorous intellect as well as a huge physical frame, and his powers as an advocate attained conspicuous notoriety. While Mr. Anderson was thoroughly familiar with the general principles of law, he was by no means a person of studious habits, and was much fonder of the pleasures of desultory reading than of obedience to that stern restraint and zealous application which the jealousy of the law demands from all who would wear its garlands of honor and

its wreaths of victory. But Mr. Anderson was one of those individuals whose deficiency in one quality generally requisite to success was in a great measure counterpoised by the preponderance of others. His imposing personal appearance, forcible powers of oratory, quick comprehension, and constant flow of humor, obtained for him a position as an advocate which others reach only by rare gifts, or by constant and laborious application.

Notwithstanding the excitability of his temperament and the somewhat blustering air of his manners, Mr. Anderson was a man of great amiability and gentleness of disposition. The qualities of his heart seem to have been developed *pari passu* with those of his mental and physical traits. He was of an exceedingly cheerful turn of mind, fond of innocent frolic and fun, and enjoyed life and the pleasures of society with all the gusto that usually pertains to those who are possessed of a cultivated fancy, a clear conscience, and a robust constitution.

# CHAPTER VIII.

## THE BAR—EMINENT LAWYERS—1832–1861.

GEORGE S. YERGER—ROGER BARTON—JACOB S. YERGER—ALBERT G. BROWN—PATRICK W. TOMPKINS—HENRY S. FOOTE—JOHN H. MARTIN.

### GEORGE S. YERGER.

While Nature, in her partiality, designates here and there an individual as the favored recipient of her special endowments, and ordains him to a particular sphere of eminence, it is rarely that she groups such an array of special talents within the limits of a single family, and fashions the intellectual traits of so many of its members in the mould of greatness, as was vouchsafed to that to which belonged the subject of this sketch. The Yergers seem to have been born lawyers. There were six brothers in this family, who attained to the highest rank at the bar, and the judicial records of both Tennessee and Mississippi bear everlasting testimony to their usefulness and their genius. Their characters glowed with a remarkable similitude, and they moved through their orbits of greatness with the uniformity and unison of a brilliant constellation.

George S. Yerger was born in Greensburg, Westmoreland County, Pennsylvania, about the year 1808. His father was of Dutch origin, and belonged to that sturdy yeomanry which gave early and lasting prosperity to the Middle States of the Union. With a large family and limited means, he emigrated, in 1816, to the neighborhood of Lebanon, Tennessee; and it was there that his eldest son, George, found an opportunity to gratify his early aspirations, who, having obtained a tolerable education, turned his attention to the study of law, and was soon admitted to the bar. He then located in the city of Nashville, where he

was for many years reporter of the decisions of the Supreme Court of Tennessee, and became one of the most eminent members of that bar.

In the prime of a vigorous manhood and glowing reputation, he removed, in 1838-9, to the State of Mississippi, and located at Vicksburg. Here his reputation, which stamped itself upon his advent, soon spread throughout the State, and he took his position among the foremost lawyers of the country—a position which he maintained with a growing tenure and extending recognition to the day of his death.

Mr. Yerger was, in every sense, a thorough lawyer. He was master of the science of law in all its branches, and his mind was richly stored with all manner of precedents, which he had thoroughly digested, and so stratified in the capacious chambers of his mind that, with the aid of a vivid memory, they furnished him unfailing resources in every emergency. If there was any decision which could by parity or analogy be brought to bear upon his view of a question, he was sure to invoke the comparison. But his genius depended not alone upon precedent: his penetrating judgment and keen understanding found a ready interpretation of the most marked features, and opened a path for justice through the most untrodden field, of circumstance.

Mr. Yerger was not an orator, so far as that quality depends upon the embellishments of fancy. His mind was too matter-of-fact in its bent and too exacting in its candor to indulge in the mere visions of imagination, and he disdained all its "flower-decked plats and blooming parterres." He was eloquent in the depth of his convictions, in the earnestness of his manner, in the logical train of his thoughts, in the force and power of his language, and in the moral mesmerism of the man. He sought only for facts, and these he would render at first transparent, then luminous, and then dazzling, to the most obtuse mind of obstinacy, prejudice, or unbelief. The gentle and sure-footed gradations with which he advanced from the obscure to the apparent, from the dark to the visible, from the murky clouds of doubt to the open glare of conviction, riveted the mind of honest inquiry and kindled perception in the eye of the dullest

comprehension. If this be eloquence, he possessed that quality.

He knew how to avail himself of every consideration that tended to awaken the feelings of sympathy and gain the good-will of courts, juries, and audiences; not, however, by specious declamation or the cunning arts of suasion, but by an appeal to the nobler passions of men: a true sense of justice, a sound moral rectitude, and to a just and full comprehension which he quickened in the minds of his hearers by his accurate and lucid interpretation and sound reasoning.

He planted himself firmly upon first truths and fundamental principles, and from these his mind, armed with the lance of penetration, clad in the mail of a sound judgment, and disciplined by correct association, sallied forth to meet every combination of circumstances and every challenge of emergency. Fallacy he detested, and to it showed no quarter; while his plain logic intersected the winding paths of ambiguity with the straight road of truth.

To these traits of mind and professional accomplishments Mr. Yerger added the noblest qualities of the heart, and to which his intellectual powers were subordinated by means of a rare moral regimen which he made the rule of his thoughts and actions. Here, indeed, lay the great power of the man—the source from whence sprung those goodly qualities and kindly manifestations which rendered his life an example of benevolence, neighborly kindness, and rectitude.

In addition to the glare of its ability, his career at the bar was characterized by an uninterrupted glow of professional gentility and ethical urbanity. He never lost his placidness by the ruling of the court; nor was his courtesy ever scorched by the heat of argument. He indulged in no fierce denunciations or coarse invectives, and though fervid and emphatic in maintaining his positions and illustrating his points, he disdained the weapons of depreciation and ridicule; but, always kind, candid, and courteous towards court, counsel, witness, and juror, he wove into his professional character a web of beautiful ethics no less adorning and expedient than its woof of genius or its warp of talent.

In social and domestic life he was no less conspicuous for the amenity and affection with which he ornamented those circles. While he was a faithful laborer, and complied patiently with the stern requirements of his profession, he reserved ample time for acts of neighborly kindness, for the dispensing of an open-handed charity, and for the hallowed enjoyment of a fond, beautiful, and loving domestic association.

About 1844 Mr. Yerger removed to the city of Jackson, and confined his practice mostly to the bar of the high court, where he gained his most brilliant professional trophies, the records of which bear a testimony to his genius and ability far more complete and satisfactory than could be wrought by the most gifted pen of metaphysical delineation. The calm and sedate quality of his mind led him to prefer the discussion of commercial questions and those of an equitable nature rather than those which spring from the ruder jarrings of society or from criminal infractions; yet his learning and tact were admirably adapted to all the duties of an advocate and to the province of criminal practice. His defences, into which he entered with all the zeal of his nature, were stern barriers to the arm of prosecution, and his vindication of the afterwards distinguished General Dan. Adams, who unfortunately slew his antagonist in a personal conflict in the streets of Vicksburg in 1844, is said to have been a masterly specimen of criminal pleading.

In politics Mr. Yerger was a stanch advocate of the principles of the Whig party, and in the campaigns of 1840 and '44 took an active part in support of its Presidential nominees. But he never sought office; he had no relish for the clash and turmoil of public life, and his devotion to his profession was superior to any ambition which he might have entertained for political preferment. Indeed, of all the affairs of life, his nature seemed to have a clear-cut and well-defined shape for the legal profession; to it he devoted his energies, and died only when he had achieved all that it could give of victory and of fame.

His death, which occurred in April, 1860, was attended with somewhat remarkable circumstances. He had left Jackson but a few days before, buoyant with hope and the vigor of health, for a visit to Bolivar County. There he joined in a deer hunt,

and, having shot a large buck, ran to secure the struggling animal, and fell dead upon the carcass from an affection of the heart produced by the excitement and severe exercise of the occasion. His death cast the gloom of deep regret over the entire State, and left a void in the ranks of the bar which time could conceal but never close.

Mr. Yerger reposed an unqualified faith in the great truths of Christianity. He was a devoted communicant and faithful member of the church. He had searched the Scriptures, and threw the weight of his great intellect in the scale with the wise of earth who have found there the promises of eternal life.

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## ROGER BARTON.

This remarkable man and eminent lawyer was born in the State of Tennessee, near the present city of Knoxville, on the 10th of October, 1802. He was the son of Dr. Hugh Barton and Mary Shirley Barton, both of whom were natives of Virginia. After receiving a good classical education at one of the colleges of East Tennessee, he began the study of law at Knoxville, in 1824, under the Hon. William E. Anderson, and after having practised his profession there for several years he removed to the town of Bolivar, and formed a copartnership with Judge V. D. Barry, a prominent lawyer of that place, whose daughter Eudora he afterwards married.

He was soon returned from his adopted county to the Legislature of Tennessee, and was afterwards selected by that body to fill the office of attorney-general, which he conducted with great ability, and with a distinguished exhibition of those qualities which afterwards rendered him so famous in criminal practice.

He had thus already acquired an enviable distinction at the bar of his native State when, in 1836, attracted by prospects more commensurable with his ambition, he emigrated to Mississippi, and located at Holly Springs, in Marshall County, where he formed a copartnership with the Hon. Joseph W. Chalmers. Here his remarkable talents and striking characteristics gained for him at once both practice and popularity, and at a special

election in 1838 he was chosen to a seat in the Legislature, to which he was again elected in 1849, and assumed an influential and leading position in that body.

At the close of the first term of Hon. Jefferson Davis in the United States Senate, Mr. Barton was presented and strongly urged for that position by the people of the northern portion of the State, and which, on account of his known ability and great popularity, he would most likely have obtained, had it not been for the military glory of Mr. Davis, which rendered his preferment always grateful to the people of Mississippi.

A thorough Jeffersonian in his views of government, Mr. Barton was a stanch advocate of State rights, and was prompt to vindicate, on all occasions, the honor of his adopted State, which was now the object of his pride and the home of his strongest affections. Its honor and prosperity were the absorbing themes of his thoughts, and the welfare of its people the great passion of his life. He was for more than twenty years the most able and influential leader of his party in his section of the State, and, had he sought office, could have obtained any within the gift of his people.

But second only to his patriotism was the love of his profession. In this he had engaged, from the beginning, all the powers of his nature, with the fondness of a devotee, not so much, however, in respect to its recluse and subtle features as its abstract utilities and practical achievements; for while, by the measure of an almost unparalleled success, he was truly a great lawyer, his remarkable talents were too self-reliant and versatile to submit to the jealous restraints and exacting subserviency necessary for the acquisition of pre-eminent legal profoundness. Hence his mind was not a mere mosaic of precedent and memorized cases, in which every blank was a desert of mental darkness, but in brilliancy of perception, in the exercise of intuitive judgment, and in the masterly preparation and astute management of his cases, he has had few equals at the bar of Mississippi.

He was brave and magnanimous, and whether in law or politics, always struck full at the crest of his adversary. In the great civic contests of 1840 and 1844 he nailed his flag to the

mast, and the effective broadsides of his eloquence and logic swept the raging sea of politics and left it clear and calm, and radiated by the glare of his genius.

An eloquent and distinguished contemporary, the Hon. David C. Glenn, says of him during this period: "Soul and feeling spoke in all he said and did. Wit, radiant and mellow, poured as from an exhaustless fountain; and his humor, as broad as that of Dickens and as grotesque as Hogarth's, was never darkened by malice or pointed with a sneer, but rejoiced in the sunshine of a glorious genius which was all his own, yet ripened and elevated by an antique and classical cultivation in which he was surpassed by few men of his time. And never did a champion of old face every fortune with a truer spirit. Defeat or disaster never cast him down. Like the wrestler of old, he rose refreshed by the fall. While his principles were in danger he was ever foremost on the battlements of the enemy; but when success crowned his standard, by his own wish Mr. Barton was ever last and least among the victors. The spoils were not a part of his principles, and ambition never led him astray."

Mr. Barton was always ready to serve his people in any capacity which immediately affected their interest, but invariably declined all positions of a general or mere honorary character. In 1837, in connection with Governor Vroom of New Jersey, he was appointed by the President a member of the commission to examine the claims of the Choctaw Indians to contingent reservations under the 14th article of the treaty of "Dancing Rabbit" Creek, which was a matter of vital importance to the people of the northern counties of Mississippi, and performed the difficult and laborious duties involved in this trust with distinguished skill and diligence.

At the district convention at Pontotoc in 1849, he received the nomination of his party for Congress, but happening to be present attending the Federal court, then in session there, Mr. Barton proceeded immediately to the hall of the assembly, and amid the welcome shouts of congratulatory applause promptly declined the honor. He was afterwards tendered by President Pierce the position of United States consul for the island of Cuba, which he also declined.

Among the chief features which achieved for Mr. Barton his great success at the bar were, in the first place, his remarkable judgment and discrimination in selecting the precise law applicable to the case in question, and in rejecting the adduction and urgency of that which, however plausible, could not stand the test of being *tried on* and adjusted to the facts. He thoroughly studied the history and character of his cases, carefully gathered every obtainable fact, and fully contemplated the law arising from them. He was cautious and deliberate in assuming his ground, and surveyed with care every inch of the field before he rushed to the attack or planted his lines of defence. Hence there was a fatal precision, a pre-engaging certainty, attending the positions he assumed, which no skill or art of sophistry could ever shake.

His logical powers were as intuitive and spontaneous as his judgment. He studied and adhered to no fixed rules or conventional arts of speech. The chain of his thoughts was the linked impulses of his own genius, and his incomparable language was but the swaddling-robes in which his ideas sprung clad into his mind. His eloquence consisted in a polished simplicity, a fascinating candor and earnestness of manner, and a forcible originality knit into the closest logic and woven into the richest and most striking illustrations. His extemporaneous command of language was a rhetorical phenomenon, and his spontaneous utterances sparkled with a vigor which premeditation would only have dimmed. His oratory was always adapted to the occasion, and whether clad in the purple robes of dignity, draped in the circumspect attire of gravity, or decked in the gorgeous colors of eloquence, it was equally effective in solemn appeals to the understanding and judgment of the court, in the sparkling streams of humor with which he beguiled the feelings of the jury, and in the gushing floods of satire and invective which he poured upon the head of injustice and guilt.

And again, that which added greatly to his success as a lawyer was his uniform placidity and good-nature; as has been said of another, he wielded the club of Hercules wreathed with roses. He united the withering sarcasm of Sheridan with the amiable temper of Sir Matthew Hale. In his character were

blended the rich fancy of Fox, the vehemence of Burke, and the courage of Erskine, with the calm depths of Holt and the candor and self-possession of Pitt. He would, when occasion justified, chastise the unfortunate victims of his animadversion with an air of gentility that added smart to the excoriations of his lash, until, writhing in the agonies of chagrin, or conscious guilt, they would often rush from the court-house, as did the clergy of Virginia on one occasion to escape the piercing shafts of Patrick Henry.

But his thoughts and his feelings were equally poised under the control of his tutored judgment and polished sense of propriety; if the former were never confused by complexity, the latter were never disconcerted by circumstances. It was related by Judge Trotter that "on one occasion Mr. Barton was engaged in a case of which the gist was fraud, and he endeavored to establish the *mala fides* of the transaction by inductions from a variety of concurring circumstances. The party against whom he appeared was a veteran in such practices, and it was almost impossible to reach him. But no web of perfidy was ever so artfully woven that the Major could not unravel its threads and expose it in its naked depravity. The celebrated John Randolph, in his palmiest days, never revelled more in the grateful task, or lashed the guilty wretch with more success. But on this occasion his adversary, long trained to such encounters, withstood the Major's fire for some time like a salamander. But, roused at last by one of his most bitter sarcasms, he sprung to his feet as if touched by a galvanic battery, and boldly facing the Major ordered him to retract what he had just said. Upon which the Major, dropping the thread of his remarks, exclaimed, with the utmost nonchalance, 'If you are so impatient, sir, to make a speech that you cannot wait until I am through, I will certainly give way.' The man was surprised and confused, and the general roar of laughter had a more quieting effect upon him than if the Major had knocked him down with his fist."

A striking feature of the oratory of Mr. Barton, and one which peculiarly characterized that of Patrick Henry, was his bold and comprehensive aphorisms, which, couched sometimes in a timely uttered sentence or phrase, would often overthrow,

at one stroke, the most elaborate argument of an opponent. Judge Trotter related also an incident of this character. "Major Barton," said he, "was prosecuting the claim of a poor man for compensation for personal services. The opposing counsel denounced the Major's client as a worthless bankrupt, who paid no debt himself whilst he was seeking to enforce an unjust claim against a man who had rather befriended than injured him. To this the Major replied by simply asking this question: 'Is it, then, seriously proposed that because the plaintiff is poor he shall be kept so forever?'"

But it was on the criminal side of the law that Mr. Barton achieved his greatest and pre-eminent distinction.

It is said of Lord Mansfield that while he was attorney-general he never lost a Crown case, for the reason that he took care that the Crown should never become a party to a cause when its rights were not a matter of certainty; and it was said of Mr. Barton that, while he was engaged for more than twenty years in a more extensive criminal practice than any lawyer in Mississippi, yet during that time he never failed in a criminal defence, because he always succeeded, by his adroit management, in securing both the most favorable action of the court and the good-will and sympathy of the jury. He seized upon every vantage-ground, and lost none which he once occupied, and it required but little time for him to so weave his mesmeric charms around the minds of the jury that they became imbued with his feelings and saw everything through his glasses.

Sir Richard Steele said of Lord Chief Justice Holt: "He always sat in triumph over, and in contempt of, vice; he never searched for it, or spared it when it came before him. At the same time he could see through the hypocrisy and disguise of those who have no pretence to virtue themselves but by their severity to the vicious." This trait was prominent in the character of Mr. Barton. He was quick to read the hearts of men, to interpret their motives, and to detect the springs of human action; and he knew just where and when and how to touch the propitious chord which was to awaken sentiments and views harmonious to his own.

He was among the few eminent lawyers of whom it may be

said that an overflowing humor and an overweening propensity for ludicrous anecdote and badinage never impaired the most implicit faith in his sincerity, nor weakened the force of his most subtle and gravest arguments; but, on the other hand, he possessed the happy faculty of blending the force of his wit with the power of his wisdom. It was not with him as Dr. Johnson says it was with Shakespeare, an irresistible fondness for a mere "quibble" which allured him from the "dignity and profundity of his disquisitions," nor the "Cleopatra for which he lost the world and was content to lose it," but it was the aroma which sprung from the blossoms of his genius and the flowers of his philanthropy.

With such a happy blending and exact adjustment of pre-eminent qualities, the career of Mr. Barton flashes like a meteor across the annals of Mississippi jurisprudence; and so varied and versatile were the qualities of his genius that it may be safely affirmed that, had he applied himself with an assiduity commensurate with his powers and professional adaptation, he would have taken his stand among the first lawyers of the world.

Mr. Barton possessed a singularly kind and generous heart. His sympathy for the poor and distressed was deep and easily aroused, and invariably called forth his best services in their behalf. His generosity often forbade justice to himself, and he often endured all the inconveniences of that which Juvenal calls "*res angusta domi*" rather than press the collection of his just dues. Toward the young members of the profession he maintained a fatherly attitude, and was ever ready to aid them with deeds of kindness, with words of encouragement, and with inspirations of hope. Nothing short of an attempted undue advantage, or an exhibition of a manifest lack of principle, ever caused him to deviate from a high-wrought professional courtesy, or to turn his back upon a new beginner.

He was a man of the most exuberant spirits, viewed every circumstance in the most generous light, and presented the bright side of the world to all who came in contact with him. His dignity was the offspring of unswerving rectitude, and his simplicity of manners the product of a clear conscience and

guileless disposition. To his country he was a pillar of patriotism, to his friends the living statue of a Pythian fidelity, and to his family the model of generosity, affection, and love; and that such a man should have enjoyed the warm and universal meed of friendship and esteem is but the reward of those who practise the hallowed precepts of that golden rule proclaimed by Heaven and dictated by the noblest sentiments of humanity. He died of acute rheumatism on the 4th of March, 1855, in the vigor of his manhood and intellect.

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## JACOB S. YERGER.

Of all the varied characters of men there is no one whose traits are wrought to a higher standard of excellence, and whose composition is more devoid of the petty weaknesses as well as the grosser foibles of mankind, than that of a truly learned, just, and upright judge. His functions are among the most sacred and elevated that pertain to the affairs of humanity, and he feels the weight of that responsibility which incurs from a higher seat the same judgment which he has meted to others.

His mind is at once the sun and the moon of the law. It sheds its beams upon its obscure features, illumines without lenifying its stern aspect, and in turn reflects back its light upon the face of society, penetrates the dark confines of human depravity, and presents a beacon for the guidance of rectitude.

His heart is a tablet upon which are inscribed in mingled characters the rigid outlines of justice, the stern mandates of a jealous rule, and the smiling pictures of benevolence and philanthropy. He knows no passion but his devotion to duty; he cherishes no motive but the attainment of justice; he fears no displeasure but the reprimands of conscience, and seeks no applause but the benediction of right.

His conscience vibrates at the tenderest touch of doubt, and utters its strains of hallowed dictation at the slightest breath of appealing virtue. His judgment stays to catch the notes of its approbation, and his actions leap forth at its bidding, as did the charmed rocks from their mountain-beds at the ravishing strains





of Orpheus. It is there alone that he seeks for justification and reward, and there finds himself the sanctified recipient of the blessing vouchsafed to the faithful servant. He holds to the sentiment of Persius, "*Nec te quæsiveris extra,*" and which Dryden has happily translated :

> "The conscience is the test of every mind ;
> Seek not thyself, without thyself, to find."

In this rare category of exalted virtues I have no hesitancy in including those of the distinguished gentleman whose character forms the subject of this sketch.

Jacob Shall Yerger was born in the town of Greensburg, Westmoreland County, Pennsylvania, on the 11th of January, 1810, and in 1816 removed with his father's family to Lebanon, Tennessee, where he was reared and educated. He was one of eleven children, and in consequence of the poverty of his father his educational advantages were sparse and limited. Full, however, of the workings of an innate genius and the ambition of conscious talents, on attaining his majority he elected the profession of law, and began its study in the office of his brother, George S. Yerger. Having, after a thorough preparation, obtained his license to practice, he located in the city of Nashville, and entered at once upon his prosperous and brilliant career. In this exacting field his talents were soon recognized, and he rose rapidly to the front rank of his profession. But in the midst of an extending practice and the most flattering prospects, he was enchanted with the flush times which then dwelt upon the banks of the great Father of Waters, and in the winter of 1837 he removed to Mississippi and established his office in Vicksburg.

This bar was at that time adorned with brilliant genius, and was justly regarded as one of the most distinguished in the South. It was there that the eloquence and tact of Prentiss, the logic and skill of Holt, and the astuteness and legal acumen of Guion, mingled in tides of genius which none but the highest order of talent could stem. But Mr. Yerger was fully equal to the task before him and to the expectations which his reputation engendered, and his ability soon gushed

forth in streams that rivalled the overwhelming intellectual torrents of his new associates, and characterized him as one of the most profound lawyers at the bar of Mississippi. His practice in the Federal courts, in the High Court of Errors and Appeals, and in the Superior Court of Chancery, was perhaps the largest and most lucrative in the State, and which he retained until his election to the circuit bench in 1855.

Judge Yerger possessed in the concrete all the eminent qualities which enter into the composition of a great lawyer and great man, while in the abstract the characterizing features of his greatness were strongly asserted in a judgment cast in the mould of a deep and accurate comprehension, in a perception whetted to the sharpest edge of intuition, in a power of logic wrought of the most ingenious skill and the soundest reason, in a memory which embraced the scope of his observation, and in an ardor of application and a devotion to duty over which no circumstance or consideration could exercise a diverting sway. His capacity for close discriminations and subtle distinctions placed his positions in the management of a case beyond the reach and coping power of ordinary intellects, while the apt communication of his ideas, the purity and simplicity of his diction, and the pathos of his convictions, unfolded the most abstruse doctrines and lurking points to the view and understanding of common-sense. His position towards his clients was that of a faithful counsellor and friend. He deceived them with no apparitions of false hopes, and with no inducements to unjust and fruitless litigation; but, candid and conscientious in all his dealings with them, he engaged their confidence, and they trusted him with an apostolic faith.

As a judge he was the Cato of integrity and the Aristides of the Mississippi bench. He was a wise and faithful expositor of law, a stern and unswerving vindicator of justice—an upright arbiter before whom the weak and the oppressed found an ample and sure redress of their wrongs. He possessed the unbounded confidence of the bar and of the people, and his decisions were received as emanations from the fountains of wisdom and justice. His addresses to the grand jury were models of legal exposition and moral commentary, and the dignity and de-

corum which he maintained in his courts were elevating to the bar, admonishing to the people, and an honor to judicature. At the expiration of his first term as circuit judge of the then third judicial district of Mississippi, Judge Yerger was re-elected, and continued in that office to the time of his death ; and the ermine which he laid aside at the summons of that inexorable sheriff of Heaven, was as pure and spotless as the shroud that enfolded his honored remains.

In every sphere of life Judge Yerger maintained the same high character which embellished his career upon the bench. He was a true patriot, and though widely differing from a majority of his fellow-citizens on many vital issues of his day, so lofty was his integrity, so firm were his convictions, and so sincere his motives, that they wrenched respect from the fiercest opposition. He was in politics an active and devoted Whig, and his services to that party both in Tennessee and in Mississippi claimed the recognition of marked fidelity and efficiency. He was twice elected to represent the city of Vicksburg in the Legislature of the State, and while a member of that body in 1841 moved the rejection of the message of Governor McNutt, which suggested the policy of repudiation, as being unworthy of consideration and an affront to the Legislature ; and so vehement and able was his opposition that the message was received by a majority of only four votes, notwithstanding the popular majority known to exist in favor of the measure.

He was convinced that the payment of the bonds of the Union and Planters' Banks was legally binding upon the State, and advocated their liquidation upon matter of principle arising from honest convictions. As chairman of the committee appointed for that purpose, he reported to the Legislature the circumstances and conditions under which those bonds were issued and sold, and introduced a resolution declaratory of their validity and binding effect upon the State. The adoption of both the report and resolution was bitterly opposed by some of the ablest men in the State, but, mainly through his exertions, was carried by a considerable majority.

At this same session he introduced, and succeeded in procuring its passage, a bill for funding the indebtedness of the State, the

wisdom of which was exemplified in the gradual recall of a large amount of outstanding warrants from a depreciated circulation, and consequently in the speedy restoral of the credit of the State.

In 1845 Mr. Yerger removed to the county of Washington, and was returned to the Legislature from that county. In 1852 he was sent as a delegate to the Whig Convention at Baltimore, and on his return was made one of the electors at large for the State. In the canvass which followed, his vigor and eloquence added greatly to the strength of his party, and increased his reputation for consummate ability.

On taking his seat upon the bench, Judge Yerger discarded all his partisan enthusiasm, and carefully avoided all participation in politics; but when the question of secession began, in 1860, to assume a serious aspect, he threw all his ability and influence in opposition to that measure. He considered it unnecessary, impolitic, and ruinous, and in the March convention of 1861 stemmed almost alone the revolutionary tide that swept over that body. While he felt deeply the wrongs of his people, he loved the Union, and was willing to rest satisfied with the obtaining of further constitutional guarantees of equality within its fold. But when the die was cast and the fatal consequences thronged upon the country, he sent three of his sons to answer the call of his State in 1861 for troops, and afterwards, so soon as he became of proper age, buckled on the armor of a fourth, who was killed in battle in 1864.

In 1865 Judge Yerger was unanimously elected as a delegate from his county to the convention for reorganizing the State government, and was chosen president of that body, over which he presided in a manner dignified, able, and satisfactory.

But if his official character was adorned with ethical traits which engaged the affection and esteem of the bar and of his political associates, his private life was no less embellished with the charms of social accomplishments. His conversation was edifying and entertaining, his manners affable and attractive, and he possessed a rich vein of polished humor, which gave him a fondness for ludicrous narrative and an aptness in the delineation of eccentricity. He was consequently popular among all

classes of people, and to such an extent that on his re-election to the bench in 1861, he is said to have lacked but two votes of being the unanimous choice of the district. He was the friend of the widow and the orphan, and his charity was large and open-handed. He delighted in extending a helping hand to struggling youth, and was exceedingly kind and generous in his demeanor towards the young members of the bar.

Judge Yerger was married in 1833 to Miss Mary H. Bowen, of Smith County, Tennessee, and had nine children, only two of whom are now living. He was a tender husband, a kind father, a true friend, and a dutiful citizen. He died of congestion of the brain, in Vicksburg, on the 14th of July, 1867, and left a deep and universal regret for the loss of one whose life was spent in usefulness and ended in purity.

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## ALBERT G. BROWN.

Albert Gallatin Brown was born in Chester District, South Carolina, on the 31st day of May, 1813, but in 1823 his father moved his family to Mississippi and established his home in the county of Copiah. He was a plain, honest, and industrious planter, and confined himself to the practical views of life and to the study of good husbandry; consequently his son was early indoctrinated in the principles of domestic economy and in the just and correct notion of the realities and verities of life, which became the mould of his future character. He was early inured to those habits of honest toil which brought him into sympathy with the great mass of struggling humanity, and he cherished a life-long effort for its elevation.

Having obtained such education as his circumstances and the common schools of the country at that period afforded, young Brown entered the law office of Hon. Ephraim G. Peyton, afterwards Chief Justice of Mississippi, and before he had reached his majority was admitted to the bar and became the partner of his distinguished preceptor. He was therefore immediately engaged in an extensive practice, to which he devoted his energies and talents with such vigor, fidelity, and skill, as at-

tracted popular notice and admiration, and stamped his early manhood with unmistakable indications of future eminence. His great popularity and rapidly growing distinction at the bar soon, however, evoked a summons to another sphere, and in 1836 he was chosen to represent the county of Copiah in the Legislature; but, having caused some dissatisfaction among a portion of his constituency by his vote for the admission of members from the counties lately formed out of the territory ceded by the Chickasaw and Choctaw Indians, he resigned his seat in 1837, announced himself a candidate for re-election, and was triumphantly returned.

While a member of the Legislature Mr. Brown participated actively and influentially in the discussion of all important questions of the period, and distinguished himself particularly by the interest which he took in matters of finance, and by the ability which he displayed during his second term, as chairman of the Committee on Banking, in his recommendations regarding that system.

In 1839 he was nominated and elected by the Democratic party to a seat in the National Congress, where, in conjunction with Hon. Jacob Thompson, he served the interest of his party and section with a vigor and efficiency that justified the confidence and expectations of his constituents and gave him repute throughout the country.

At the expiration of his term, in 1841, he declined a renomination for Congress, and became a candidate for the office of circuit judge in his district, to which he was elected by a large majority. His career upon the bench was characterized by a conscientious uprightness and an unswerving integrity, and by a dispatch which was greatly promotive to the ends of justice and conducive to the interest of society. His comprehensive views, uncommon firmness of mind, strong powers of reason, intuitive discernment and love of justice, rendered him eminently fitted for the duties of a judge, and he brought to the bench the same personal qualities which had endeared him to the people as a lawyer, as a politician, and as a man.

In 1843, when he had just ascended his thirtieth year, he was elected Governor of Mississippi. During the canvass of that

period the public mind was greatly agitated upon the question of paying or rejecting the bonds of the Union Bank. Judge Brown was in favor of the repudiation of these bonds, while his Whig opponent, Hon. George R. Clayton, contended for their validity and binding power upon the faith of the State, because their issuance was an act authorized by a majority of the people. But on referring to this question, Governor Brown in his inaugural address said that "to set up the will of a majority as being superior to the Constitution of the State as a measure of power was virtually making one acknowledged wrong a pretext for committing a still more grievous wrong."

The administration of Governor Brown was distinguished for the many important measures which he recommended, and their beneficiality to the general interest of the State. He was warmly enlisted in the cause of education, and in his first message to the Legislature said :

"As intimately connected with the future glory and happiness of our State, the subject of education, more perhaps than any other, challenges our deepest consideration. Where is the seminary fund? is a question often asked, but never satisfactorily answered. To members of the Legislature let me say, our common constituents will expect of us some account of this munificent fund, and a speedy application of it to the great purpose for which it has been set apart. The day which witnesses the completion of this magnificent temple of learning will be a brilliant one in the annals of Mississippi. It will be the dawning of a new era in the history of letters, and as such will be hailed with joy by the friends of science throughout the nation.

"Our State will not be appreciated at home nor sufficiently honored abroad until her educated youth shall acknowledge as their *alma mater* this or some other reputable college within our own limits. The practice of sending our youth abroad to be educated ought to be discouraged. The only effectual means of doing so is to rear up colleges and academies at home which may successfully compete with those of other States."

The impetus which these sentiments and recommendations gave to the cause of education resulted during his administration in the establishment and endowment of the State University

at Oxford, an institution which, if it has not reached the standard of his wishes, owes its foundation and advantages largely to his genius and patriotism.

In 1845 Governor Brown was re-elected, and during his second term as Governor, in 1847, appointed Hon. Jefferson Davis as United States Senator, to fill the vacancy occasioned by the death of Hon. Jesse Speight, and which was approved by the unanimous election of Mr. Davis by the Legislature in 1848.

In 1847, before the expiration of his second gubernatorial term, Governor Brown was again elected to a seat in the National House of Representatives, and was re-elected in 1849. In 1853 he was elected to a seat in the United States Senate, which he held by re-election until 1861, when he resigned, in company with the other Southern Senators, to share the fortunes of his people and the new Confederacy.

It would not comport with the province of this work to follow commentingly this remarkable man through his long and brilliant political career. Its features belong to the brightest pages of our national history, and should be studied in full for the great lessons of principle, of patriotism, and of true greatness, moral, social, and political, which it teaches. It resembles the glow of some brilliant star steadfastly pursuing its course and shedding its benign and untarnishable beams amid the wreck of constellations and the Phaetonic confusion of the firmament.

Governor Brown saw no remedy for the difficulties that beset the pathway of his people but in the throes of revolution and secession, and he considered the election of Mr. Lincoln to the Presidency upon a purely sectional platform as the final and consummating act of justification. With this honest conviction he returned to his constituency. He had used his best efforts to stay the solemn alternative, but when his State had seceded and he saw the skeleton hand of war rolling up the Federal Constitution and unfolding in its stead the banners of subjugation and vengeance, he promptly girded himself for the contest, and raised a military company known as the "Brown Rebels," of which he was made the captain. He was no stranger to the drill and discipline of a soldier: he had in early manhood mani-

fested an interest in the military organization of his State, and had been made a brigadier-general of its militia. His company was assigned to the Eighteenth Mississippi Regiment, commanded by Colonel E. B. Burt, and was among the first troops sent to Virginia. There he participated in the battles of Bull Run and Manassas, and soon afterwards at Leesburg, where Colonel Burt was killed.

But notwithstanding that his services in the field were as conspicuous for ardor and gallantry as his civil services were brilliant and eminent, his people felt the need of his able and faithful counsel, and on the convening of the Legislature in December, 1861, he was elected to the Senate of the Confederate States, and took a leading position among the eminent gentlemen of that brilliant assembly.

At the termination of the war, ex-Governor Brown retired to the privacy and seclusion of his farm, but, like Cincinnatus, he was ever ready to answer the call of his people, and devoted himself in his retirement to plans and efforts to ameliorate their sufferings, and to secure some remnant of hope from the apparent wreck of every prospect. These meditations and purposes led him to assume positions in advance of his people, and which they were not yet prepared to occupy ; but time vindicated his wisdom and prescience, and proved the grand old patriot to be as true in adversity to the best interest of his State as he had been in the brightest days of its prosperity.

Through all the varied spheres of his remarkable life—three times in the Legislature, three times in Congress, three times a national Senator, twice the Governor of Mississippi, a brigadier-general of militia, a captain in the Confederate army—Governor Brown occupied the same exalted position in the esteem of his associates and in the confidence and affection of the people. No stain marked his pathway, and no blot dimmed a line of his record. Yet, notwithstanding the splendor of his unbroken success, he seems to have had really no fondness for the glittering honors which were poured upon him, and soon after the war he wrote to a young friend as follows :

" True, as you say, I had many offices. Indeed I may say that I never knew defeat in any of my aspirations. And it is

just because I had success which people call wonderful that I feel competent to administer a word of caution to the young men of this generation. My young friend, do not be deceived by the glitter of office. I am now past my three-score years, and am fast travelling into the ten. I have held almost every office in the gift of the people, and I can truly say with the preacher, 'It is all vanity and vexation of spirit.' Looking back over a long and I hope not unsuccessful life, I can say with a clear conscience, my greatest regret is that I have ever made a political speech or held an office. There is a fascination in office which beguiles man, but be assured, my young friend, it is the fascination of a serpent; or, to change the figure, it is the *ignis fatuus* which coaxes you on to inevitable ruin. I speak of that which I know. If my young friends will be governed by my advice, I have this to say, after all my successes as a public man, now when my head is blossoming for the grave: I feel that it would have been better for me if I had followed the occupation of my father and been a farmer."

The domestic life of ex-Governor Brown was all that the sweets of conjugal affection could render it. During his first session in Congress, in 1841, he was married to Miss Roberta Young, of Alexandria, a lady of rare and fascinating accomplishments, who administered the affairs of his household with all the felicity of intelligence and amiability, and who still survives to cherish his memory and observe the reverence in which it is held by his countrymen. His death occurred on the 12th of June, 1880, and was attended by the following circumstances:

He had ridden on the evening of that day to the village of Terry, a short distance from his residence, to procure the attendance of a physician for Mrs. Brown, who was suffering from the effects of chills, and, after having spent a short time in attending to business and in making social calls, he returned, accompanied by Dr. Rawles, his family physician. On reaching his residence he requested the doctor to walk in, while he would ride to the pond to water his horse. In about twenty minutes from that time the horse was observed returning riderless, and search having been made immediately, the ex-Governor was found lying dead in the pond, and in shallow water, with his face

downward. Dr. Rawles repaired immediately to the scene, and upon examination pronounced that his death was occasioned by a sudden attack of apoplexy or congestion, as there were none of the usual symptoms of death by drowning.

His remains were conveyed to Jackson on the next day, where they were to be interred, and were laid in state beneath the rotunda of the Capitol. Here they received every token of honor and respect which the sorrow and sympathy of a whole people could offer, and on the next day the distinguished gentlemen who bore his pall to the grave and tossed with solemn reverence the cold clods upon his coffin, consummated the last act which the honors of this world could perform for the mortal parts of greatness. But, turning away from these, we find him still living—living in the good which he has accomplished, in the grandeur of his record, in the glorious example which he has left as a legacy to coming generations, in the prosperity of his country, and in the affections of his people. His name will gather the tribute of honor as it passes down through the generations, and so long as there is a Mississippian, a heart will quicken with reverence for the memory of Albert G. Brown.

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## PATRICK W. TOMPKINS.

There is no trait of character which confers so much benefit upon its possessor—which lops away so many brambles, levels down so many hillocks, and surmounts so many obstacles of life —as that which we call amiability.

Power may reach the limits of its control; force may blunt its weapons against the tough hide of obstinacy; reason may exhaust in vain its logic upon the dull ear of perversity, and the unction of suasion may congeal before the cold threshold of misanthropy; but good-nature wields a soothing influence over the most obdurate circumstance, and binds the sternest fate a captive to its charms.

Notwithstanding its discountenance by the mock dignity of asceticism and the pharisaical gravity of the self-righteous, a merry humor rarely fails to find a kindling reciprocation in the

bosom of the most embittered misanthrope. It is indeed the most efficacious antidote to that more prevalent spirit which not only magnifies the real ills of life, but which even soars away upon the wings of excursion in search, not of the olive-leaf of hope, but of the rising peaks of sorrows which it knows not of.

The hilarious man dispenses a contagious cheerfulness which penetrates and often dispels the most settled gloom. He weaves the garlands of pleasantry of the very thorns of life, and hangs a rose upon every thistle. Such a man is truly a promoter of philanthropy; and such was the character of the subject of this sketch.

Patrick W. Tompkins was a native of Kentucky, but was of Irish parentage, and possessed in a remarkable degree the wit and humor so characteristic of that good-natured race. His early education was limited, but his sprightly intellect and conscious talents led him at an early age to the study of the law. He was first admitted to the bar of his native State, where he practised for several years with a success which only ability, energy, and assiduous application, could achieve.

He removed to Mississippi about the year 1838, a period when so many afterwards distinguished gentlemen first made their appearance in this field of professional eminence, and here he entered upon a career of much brilliancy. He was particularly noted for his successful criminal practice, and was engaged in many of the most important cases of that character. His general knowledge of the law was extensive, and his familiarity with precedent sufficiently ample to meet the exigencies of any ordinary occasion; while his quick sagacity, incisive argumentation, and ready retort, greatly promoted the irresistible effect of his energetic and careful preparation.

His management of a case was astute and ingenious, and so conducted as to secure every advantage which the circumstances presented and the law allowed. But his main forte lay in his art of captivating the jury, an effect which his sparkling wit and abundant store of apt, illustrative, and pleasing anecdote rarely failed to accomplish. In vivacity of humor, graceful ridicule, and sparkling repartee, he was perhaps more like Curran than any other member of the Mississippi bar. Yet his

wit was not so elevated and polished as that of Curran. Where, indeed, in the history of the Forum could we find another Curran? From whom besides him could we, as a matter of course, expect the reply he made to Lord Robinson, when the latter threatened to commit him for contempt of court? "If your lordship should commit me, both your lordship and myself may reflect, that I will not be the *worst thing* your lordship has ever *committed.*" And his lordship was so completely overwhelmed with the wit and boldness of the reply that, so far from committing him, he called upon the other members of the bar to restrain Mr. Curran within the rules.

Yet Mr. Tompkins possessed much of the same spirit and of the same vivacity of retort. As a political debater he had few superiors, and entertained a decided fondness for the contests and excitement of the hustings, which, together with his unbounded personal popularity, finally constrained him to turn his attention to politics.

In 1847 he was elected to a seat in Congress, and his career there was both brilliant and honorable, during which he engaged in all of the important discussions of the period. He was a stanch supporter of Mr. Polk's administration, and vigorously exposed and derided the grounds of opposition, on the part of the New England States, to the Mexican War.

Mr. Tompkins was a man of congenial and warm-hearted disposition, sincerely philanthropic in sentiment, and a patriot of the purest type, and while he remained in Mississippi enjoyed a professional, political, and personal popularity of which but few men can boast. On the acquisition of California he removed to that State, and died a few years afterwards.

## HENRY S. FOOTE.

Henry Stewart Foote was born in Fauquier County, Virginia, on the 20th of September, 1800. His educational advantages were good, and he graduated at Washington College, Lexington, Virginia, in 1819, was admitted to the bar in 1822, and in 1824 emigrated to Tuscumbia, Alabama, where he edited a Democratic newspaper. In 1826 he removed to Jackson, Mississippi, and formed a copartnership for the practice of law with Anderson Hutchinson. His position at the bar soon became prominent, and he enjoyed an extensive practice, but his taste and turn of mind soon led him to an active participation in politics, and so great was his popularity as a political leader that in 1847 he was elected to a seat in the United States Senate, and was made chairman of the Committee on Foreign Relations. His vigor of mind, political tact, and ready powers of debate, caused him to assume an active and conspicuous position in regard to all the important questions of that period, and particularly in respect to the Compromise measures of 1850. In 1851, in a hotly contested election, he was chosen Governor of Mississippi over the Hon. Jefferson Davis.

Governor Foote was a thoroughly aggressive politician. He advanced his views boldly, and advocated them with a vigor and ardor that excited the admiration of the people and gained the respect of his opponents. He has the character, however, of having been fickle in his politics—a feature which sprung, no doubt, from the traits already observed. As Governor of Mississippi his administration was marked by vigorous efforts for the advancement of the material prosperity of the State, and gave satisfaction to the people.

In 1854 he removed to California, but in 1858 returned to Mississippi and resumed the practice of law in Vicksburg. In the Southern Convention, at Knoxville, in 1859, he took strong grounds for the preservation of the Union. He was bitterly opposed to the policy of secession, and when the question began to assume a serious aspect in Mississippi, he quit the State and resided in Tennessee, but when that State also espoused the secession cause he gave adhesion to it, and was chosen as one

of the Tennessee delegation in the Confederate Congress, where his career was chiefly noted for his hostility to the Confederate President, and finally for his opposition to the continuance of the war. He was in favor of capitulating upon the terms offered by Mr. Lincoln in 1863 and 1864. After the war he became identified with the administration of General Grant, and was appointed superintendent of the United States Mint at New Orleans, which office he held to the time of his death, which occurred at his home in Nashville, on the 20th of May, 1880.

Governor Foote possessed a fiery and vehement temper, and was engaged while in Mississippi in several duels, two of which were with the distinguished Sergeant S. Prentiss. He was, however, when not agitated by the excitement of opposition, exceedingly mild in his manners, and was an accomplished devotee of the social circle, but he was at all times inclined to be argumentative, and on the stump was often fierce in ridicule and invective. He was at one time very popular with his party in Mississippi, and few men ever exercised more influence over popular assemblies than he at one time wielded.

As a lawyer Governor Foote was learned and astute; he was apt and alert in discernment, quick to perceive, and logical in argumentation. His tenacious disposition rendered him exceedingly loath to accept defeat, and he was in all respects a formidable antagonist. He was engaged in many of the most important criminal cases that occurred in the State during the time of his practice at the bar of Mississippi, and acquitted himself with ability and remarkable success. His main professional strength lay in his capacity for captivating the minds of the jury: his methodical arrangement of facts, his forcible illustrations, earnestness of manner, boldness of assault, and complacent though scathing rejoinder and ready repartee, gained for him first the attention and then the favor of the jury. The boldness of his assumptions and the apparent depth of his convictions were too startling for the question of ordinary minds, and they yielded assent to that which they felt incompetent to dispute.

But it was on the hustings that Governor Foote achieved

his greatest triumphs. As a popular orator he had but few superiors, and gathered applause in every phase of his political idiosyncrasy. He was familiar with human nature, and he knew how to present successfully the colors of plausibility to the mind of ignorance until it mistook illustration for comprehension and sympathy for conviction.

Governor Foote was author of several works, entitled respectively, "Texas and the Texans," "Sylla and Charybdis," and "The Bench and Bar of the South-West." While his style is by no means void of elegance, neither of these works has met with the favor which the reputation of their author proclaimed for them. Like that of many great orators, his pen failed to reproduce the inspiration that fell from his lips. But the influence which he long wielded over the destinies of Mississippi and the sheen which his talents added to its jurisprudence inscribe his name indelibly and lustrously upon the pages of its history.

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## JOHN H. MARTIN.

The subject of this sketch was a native of Virginia, and was born in the County of Albemarle in the year 1790. He was a descendant of a Huguenot family which came to the colony, perhaps in the number which flocked thither at the dispersion of that sect by the revocation of the Edict of Nantes. He was a soldier in the army of General Jackson during the Indian wars, and was promoted to a majority for conspicuous services. He was also in command of Tennessee troops at the battle of New Orleans. Soon after the termination of the war he began the practice of law at Glasgow, Kentucky, where he acquired prominence; but in 1826 he removed to Nashville, Tennessee, and became associated with Hon. John Bell and Judge Henry A. Crabb. From this distinguished connection he no doubt received the confirmation of that lofty estimate of the dignity of his profession and the sanctity of the duties of an advocate, that calm self-possession, and refined and high-bred courtesy, which afterwards characterized his professional ethics.

When Judge Crabb was promoted to the supreme bench and Mr. Bell elected to Congress, Mr. Martin became the partner of George S. Yerger, and this firm prepared the volume of Tennessee Reports styled Martin & Yerger's, an elegant analytical presentation of the law, whose *syllabi* and compendiums assert the ability of the authors. Mr. Martin afterwards held for a short time, under the appointment of the Governor, the position of circuit judge. In 1836 he removed to Vicksburg, Mississippi, and formed a copartnership with Judge Beverly Hughes. When this firm was dissolved he practised some time alone, and then became associated with Charles Scott, afterwards Chancellor of the State.

Judge Martin was a well-read lawyer, conspicuous for his application and devotion to his profession, and noted for his integrity and fidelity. He was a man of modest and amiable deportment, bland and courteous in his bearing; and while he made no effort in his oratory towards ornation or display, his logical powers were prominent, and he was a clear, earnest, and persuasive speaker. His success at the bar was due more to the depth of his knowledge, his exact preparation, and conscientious dealing with the interest of his clients, than to any brilliant superficiality. He was a strict Presbyterian in religion and morals, and was at the time of his death an elder in that church. He died of yellow fever at Vicksburg in 1841.

# CHAPTER IX.

## THE BAR—EMINENT LAWYERS—1832–1868.

WILLIAM S. BARRY—GEORGE R. CLAYTON—DAVID C. GLENN—WALKER BROOKE—JAMES C. MITCHELL.

In his famous funeral oration pronounced in honor of those who fell in the Samian war, Pericles endeavored in an elegant manner to impress the devoted patriotism of the dead, as an example of glory, upon the living; that their deaths were a joint and hallowed offering upon the altars of their country, and that while, collectively, they gave to it their lives; individually, they received that renown which never grows old, and the most distinguished tomb they could have, that in which their glory is left behind them, the subject of everlasting record; that for illustrious men the whole earth is the sepulchre; and not only do the inscriptions upon columns in their own country point it out, but in all lands there dwells an unwritten, inheritable memorial of the heart, more durable than any material monument.

There is not an instance in the history of this world in which any class of individuals exhibited a loftier patriotism, a more glowing pride, or a more splendid gallantry, than that displayed during the civil war by the members of the Mississippi bar; and the same is true in regard to the conduct of the profession throughout the South. No sooner had the first cloud-caps of the coming struggle heaved in view, than their briefs were left unargued, their books were laid away, their offices were closed, and with drawn swords they were found in every town, in every village, and in every hamlet marshalling their countrymen in the array of battle, organizing companies and regiments, encouraging the brave and shaming the timid, leading the advanc-

ing files, swelling the ranks, or heading the hurrying columns of the Confederacy. Everywhere and in all positions they met the issue with a determination and devotion that challenge comparison in the annals of patriotism.

Many of them had exhausted their pens and their powers of speech upon the hustings and in the halls of legislation, in argument of the great questions which were now certified by the voice of honor and of patriotism to the arbitrament of war. Before this tribunal they were prepared to vindicate and seal with their blood the scroll of principles which they had advocated upon the platform ; and if the mortality list is any indication of bravery in battle, surely the claim of the bar to that quality is paramount, if vouchsafed in proportion to its losses.

No trade, no occupation, no class of persons, suffered so much as the legal profession. So great were its casualties that populous counties were left without an attorney, and on the resumption of the courts whole districts could not furnish lawyers sufficient to conduct the ordinary legal business and litigation: Their lights had gone out amid the clouds of war like the expiring sparks of a meteoric shower. The forums that were wont to echo to their eloquence were silent and dumb, while in many instances, a few old men alone remained to afford example and pilotage to the untutored youths who were ushered into the places of the fallen. Among the latter were our Blyth, Barksdale, Harrison, Rogers, Miller, Baldwin, Aldridge, Autry, Leigh—men who sunk the lawyer in the patriot, the patriot in the soldier, and the soldier in the martyr to the liberties of their country.



William P Barry

## WILLIAM S. BARRY.

The distinguished subject of this memoir was born in the then village of Columbus, on the 10th day of December, 1821. His early educational advantages were good, and after the usual academical preparation, he was sent to Yale College, and graduated with distinction at that institution about the year 1845. On his return to Columbus, he entered, as a student of law, the office of Messrs. Harrison & Harris, and soon attracted attention by the earnestness of his application, the courtesy of his manners, the polished fluency of his language, and by the remarkable eloquence which he displayed in a debating society composed of the best speakers and most intelligent men of the town.

On obtaining his license, Mr. Barry began the practice of law in copartnership with Judge J. S. Bennett, and soon manifested a brilliancy of talent and a rare aptitude for his profession which furnished flattering indications and promise of future eminence, but, becoming weary of professional monotony, he retired from the bar in 1847 and settled as a planter on his farm in Oktibbeha County. Here, however, his talents soon commanded notice, and in 1849 he was elected from that county to a seat in the lower House of the State Legislature, and was re-elected in 1851. While in the Legislature Mr. Barry participated actively in the promotion of all the leading measures of his party, and in the discussion of the exciting questions of that period, in which his manly bearing and oratorical powers commanded much respect and influence.

In 1852 he removed to that portion of Sunflower County afterwards included in the county of Leflore, and in 1853 was elected to a seat in the National House of Representatives. While in Congress Mr. Barry was noted for his alertness and penetration, and for his skill and eloquence in debate. He took strong grounds in opposition to the party denominated "Know-Nothings," and in his speech on "Civil and Religious Toleration," delivered in the House of Representatives on the 18th of December, 1854, he exposed the policy and principles of that party in a lucid, searching, and effectual manner. He

contended *that a secret political association was dangerous to the rights of the people and to the stability of the government, and that a person might as well owe allegiance to a foreign sovereign, and be ready to obey his commands, as assume obligations to any society of his countrymen which might place him in collision with his own Government: that the most beautiful and soothing effect of civilization, the loveliest influences of our own institutions, has been to mollify prejudice against those outside our borders, and to bring the whole family of nations, as it were, into a common brotherhood.*

At the expiration of his term in Congress, Mr. Barry declined a re-election and resumed the practice of his profession in Columbus, in copartnership with Thomas Christian, Esq. This firm continued with an increasing command of business until 1855, when the political admirers of Mr. Barry would no longer dispense with his abilities in the arena of politics, and he was again induced to come forth from the retirement of professional life; and in the midst of the fierce political contest of that year he became the leader of the Democratic party in his section of the State. He was again elected to the Legislature, and was made speaker of the House, over which he presided with an energy and ability that fully comported with his reputation.

From this time Mr. Barry became absorbed in the contemplation of the great question of disunion, whose rapid approach his sagacity even now foresaw; and as it rolled its huge proportions to the brow of the political horizon, he became more and more convinced that, though beast it might be, it was far preferable to that *monstrum horrendum, informe, ingens*, of Northern fanaticism, whose ravages threatened the destruction of every Southern interest and Southern right; he therefore boldly and firmly embraced the alternative, and on taking his seat as a delegate from the county of Lowndes in the Mississippi Secession Convention of 1861, he was immediately chosen the president of that body. In this convention were assembled, *par excellence*, the wisest and best men of the State, and the lofty bearing and sublime attitude maintained by Mr. Barry as its presiding officer gave a dignity, steadfastness, and solemnity,

to its proceedings, full worthy of the momentous event. So impressed was he with the importance of the occasion and the great object which had been achieved, it is said, that it was with the most powerful manifestations of the mingled feelings that throbbed and swayed within his bosom, with faltering voice and tearful eye, that he announced the decision of the convention, that Mississippi was no longer a member of the Federal Union, but a Sovereign and Independent State. It is said that he never again used the pen with which he signed the Ordinance of Secession, but carefully laid it away with its half-delivered ink, and left it to his only son, a namesake, with the injunction that it should be preserved as an heirloom in the family.

Mr. Barry was not a disunionist *per se*, and had used his best endeavors to stay the storm, so long as he considered an effort to do so consistent with manhood and honor. If, as a member of the Charleston Convention of 1860, he seceded with others from that body, it was for the purpose of procuring the nomination of a person for the presidency who would possess the confidence of the Southern people, and whose character would give assurances that would allay their excitement and discontent; and with this view he participated actively in the nomination of Breckenridge and Lane in the subsequent convention at Baltimore.

Mr. Barry was chosen by the Mississippi Convention as one of the seven delegates to the convention of the Southern States at Montgomery, and was afterwards elected a member of the Provisional Congress of the Confederate States, but as soon as the war was fairly begun he conceived that his duty was in the field, and having obtained authority from President Davis to raise a regiment for the war, he resigned his seat, returned to Mississippi, and in the spring of 1862 organized and mustered into service the 35th regiment of Mississippi infantry. This regiment was led by Colonel Barry through some of the bloodiest scenes of the great struggle, and he was regarded as one of the best volunteer officers in the Confederate Army. His regiment took an active part in the conflicts with the army of General Grant in Mississippi and in the defence of Vicksburg, where it was

surrendered. It subsequently shared in the Georgia campaign and participated in the battles around Atlanta. In the beginning of the expedition of General Hood, Col. Barry was wounded at Altoona, and rejoined his regiment in the vicinity of Mobile, where he was captured in the assault on Blakely on the 9th of April, 1865.

As an officer Col. Barry was characterized by an unswerving devotion to duty, a courage which knew no odds or disparity, a coolness which no danger could perturb, and by a stern justice blended with kindness. He was greatly admired and beloved by his men, and they would have followed him into the mouths of the guns of Balaklava.

Returning from the war, Col. Barry retired to the seclusion of his home, and on being asked by a friend in what manner he employed his time, he replied that as far as he could, he was living in a state of vacuity, that the present was all gloom and there was no promise in the future. "My thinking in the past," said he, "has not been profitable—my hopes for my country have all been blasted, and as far as I can, I will quit thinking and for a while lead a negative existence."

His naturally feeble constitution, which his heroic nature had sustained through the hardships and trials of war, became burdened with a despondency which induced a rapid decline of his health, and soon his friends beheld with silent sorrow and commiseration the ravages of the fatal malady that had fastened its inexorable grip upon his emaciated frame; yet he maintained to the last that independence of spirit and sublime sentiment of patriotism which had been the ruling passion of his life. In answer to a solicitation made by the authorities of Yale College a short time before his death for a biographical report, he denominated himself "originally a Democrat, then a States Rights man, during the war a conscientious rebel (so called), and at that time a pardoned reconstructed Johnson man." He reported himself "practising law in Columbus, trying to gather from the wreck which the war made of all our fortunes whatever may be left, and to make a support for my family by my profession. As to religion, by education a Presbyterian; by taste, an Episcopalian; in practice, nothing."

It has been said that all great passions are born in solitude, that they are tamed and degraded by the common intercourse of society, and utterly lost and extinguished in public companies, crowds, and assemblies; but here we have a brilliant light, kindled in the blaze of the forum, in the halls of legislation, and in the smoke of battle, waning away and extinguishing itself in the damp of seclusion—the noblest passions that ever swayed the heart of mortal mouldering in the rust of inaction and the canker of despondency. Col. Barry saw no hope for his country, and that dread reflection obscured every light and cast the gloom of darkness over his existence. He died in Columbus, at the residence of his sister, Mrs. J. D. Bradford, on the 29th of January, 1868.

Col. Barry possessed a superior order of talents, which rendered him at an early age an ornament to his profession and the idol of his party. His combined elegance of manner and eloquence of diction rendered him one of the most accomplished and popular orators of his day. It is said that his speech at Montgomery in answer to the call of the people on the day of the inauguration of President Davis, was more happily conceived, more eloquently delivered, and more highly applauded, than that of any of the distinguished gentlemen who spoke on that inspiring occasion. As a lawyer he possessed all the qualities of a successful advocate; full of sensational and perceptive energy, his comprehension was rapid and his retort ready, while his logical powers were adapted to the most subtle and abstruse reasoning. His imagery was copious and fascinating, and his art of suasion conquered the sternest obstinacy and soothed into sympathy the bitterest rancor of prejudice. While his knowledge of the law was drawn perhaps more from the hastily and promiscuously gathered crops of genius, than from the more solid stores of profound research and experience, so potent were the combined powers of his mind that he seemed to possess, by intuition, resources adequate to any emergency. His strong and lively imagination, fine taste, faultless expression, and elegant vein of humor, rendered him an interesting companion, and a favorite of society—a circumstance which, so far as it allured him from the dull routine of professional life,

and from the monotonous path of professional distinction, to the dazzling arena of politics, was not conducive to that eminence which his genius had fashioned for him at the bar.

Col. Barry was unswerving in his adherence to the line of his duty, and whether amid the carnage of the sword, the encounters of parliamentary debate, in the conflicts of the forum, or in the concerns of private life, he permitted no circumstance to intervene, and no obstacle to stand unassaulted between him and the performance of a moral obligation.

He possessed a sublime reverence for justice and truth, and abhorred duplicity and evasion in whatsoever garb they might be arrayed, or whatever may have been the plea that invoked them. His judgment was formed calmly and deliberately, and he was always ready to defend his positions by honest argument and logical illustration. While his disposition was exceedingly amiable, he was scathing in his invectives against injustice, fierce in his denunciation of wrong, and eloquent in the defence and advocacy of right.

Col. Barry was a warm friend, and a devoted husband and father. He was married on the 20th of December, 1851, to Miss Sally Fearn, daughter of Dr. Thomas Fearn, of Huntsville, Alabama. This lady is yet living, and is entitled to more than an ordinary share of the credit and esteem due to the amiable, the accomplished, and the faithful wife and widowed mother. Her maternal devotion awakened in her bosom an energy and determination which have woven the web of prosperity from the weeds of desolate widowhood.

Col. Barry was affectionate and sincere in his attachments, and could see no fault in his friends. He was the soul of honor, and knew no feeling of envy or sentiment of jealousy. He delighted in aiding his younger brothers of the bar, and maintained towards all a frank and generous attitude. His kindness of heart and consideration for the comfort of his friends were beautifully exemplified on the night of his death. They knew that his end was nigh, and many of them had gathered in attendance on the final scene, and a few minutes before the fatal hour arrived, he turned to his sister, Mrs. Bradford, of whom he was the dying guest, and asked what friends were in the

sitting-room. On being told their names he charged her to express to each of them his grateful appreciation of their kindness in calling to see him at such an hour, and to convey to them the highest assurance of his friendship and good-will. He then said :

" Sister, those friends will remain during the night, and you must not forget about midnight to provide them with some refreshments. Go out and direct that coffee be ready for them at that hour." But before the hour arrived for this last appointed feast of friendship, the spirit of William S. Barry had taken its flight, and his cup remained unsipped upon the hallowed board. But down to the end of time his name will glitter in the annals of Mississippi in glaring association alike with the brightest days of its prosperity and the darkest hours of its adversity ; in the former, he was an honor to its glory, and in the latter, the glory of its gloom.

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## GEORGE R. CLAYTON.

There is a republican heraldry more glorious than all the glittering insignia and emblazoned armorials that ever gauged the pride of the grandest aristocracy—a heritage which can neither be devised as an appurtenance of domain, nor bequeathed as an incident of the proudest title of nobility. It is the legacy of ancestral emulation—the spirit which in ancient Rome devoted whole families, through generations, to the service of the Republic, and which impelled the third Brutus to emulate the glory of the first.

This legacy brings in its train the treasures of example ; the invaluable stores of refined training, and the wealth of hallowed inspirations. He who heirs this inheritance possesses every motive to the strife for eminence, the strongest incentives to virtuous and vigorous action, and is guided by the most imperious influences that conduce to the expansion and development of the highest moral and intellectual character ; the virtues of his ancestors form the beacons of his pathway, while a tutored ambition bids him onward. Such were some of the influences

which moulded the character of him who forms the subject of this sketch.

George R. Clayton was born in Athens, Georgia, on the 6th of October, 1808, and was the oldest son of Hon. Augustine S. Clayton and Julia Clayton, *née* Carnes. He graduated at the University of Georgia in 1827, and read law in the office of his father, who was one of the many able lawyers, distinguished jurists, and eminent representatives in Congress, of whom Georgia can so justly and proudly boast. George began the practice of law in his native town, and his natural ability and thorough professional training enabled him very soon to attain a position of prominence at the bar; but the attention which the sprightliness of his genius had so early attracted was not to permit its confinement to the dull routine of a law office, and its seclusion from public affairs.

In 1834 he was elected to a seat in the Legislature of Georgia, and participated with activity and prominence in all matters of general legislation, and particularly distinguished himself by the remarkable ability and zeal he displayed in the advocacy of a petition made to the Legislature for the pardon of a minister of the gospel, the Rev. Mr. Johnston, who had been convicted on circumstantial evidence of the murder, in his own house, of a young girl who was his ward. Here was a theme and occasion well calculated to kindle the glowing benevolence of his nature, and elicit the brightest coruscations of his intellect; and he nobly availed himself of the opportunity. After a thorough investigation of the case, Mr. Clayton became so profoundly convinced of the innocence of the applicant for legislative clemency, that he threw all the impulses of his heart and powers of his genius into the struggle for the rescue of the unhappy man from the terrible fate that awaited him; and in this noble effort achieved a reputation throughout the State for pre-eminent qualities, and for an intellectual ability rarely attained by one of his years.

About this time Mr. Clayton was married to Ann R. Harris, oldest daughter of Gen. Jephtha V. Harris, who for more than forty years practised law in the Northern Circuit of Georgia, with distinguished success; and if it be true that the germs of

excellence pulsate in inheritable veins, this lady brought to him a dowry kindred to that heritage described in the beginning of this sketch.

In 1836 Mr. Clayton removed with his family to Mississippi, and established his residence in the town of Columbus, where he continued the practice of law, and took his position among the most eminent of the profession; but, while he was a devoted barrister, he entertained firm and vigorous opinions regarding matters of public interest, and still listened to the voice of political ambition. During the very next year after his advent to Mississippi, we find him engaging in a fierce discussion, at Columbus, with Alexander G. McNutt, and acquitting himself with distinction in his polemical contest with that veteran politician, who was then canvassing the State for governor upon the Van Buren platform.

At the election following this canvass Major McNutt was elected, and during his term as governor promulgated those doctrines which finally resulted in repudiation. To this principle Mr. Clayton was bitterly hostile, and in 1843 engaged in a canvass for governor against Hon. Albert G. Brown, in which the main issue between the opposing candidates was repudiation or payment on the part of the State of the bonds of the Union Bank, but the policy of repudiation was embraced by a majority of the people, and Mr. Brown was elected.

As the writer has frequently had occasion to refer to this question, which carried men into office and hurled others out, it may not be improper to present here a brief history of its character, and the influences which were brought to bear upon the people in its support.

On the 21st day of January, 1837, an institution was incorporated by an act of the Legislature of Mississippi, under the style and title of "The Mississippi Union Bank," with a capital of $15,500,000, which was to be raised by a loan to be obtained by the Board of Managers appointed by the Legislature, and composed of three persons from each county in the State, who were to open books of subscription at their respective county seats, until the appointment of a Board of Directors should intervene; and in order to facilitate this loan the faith of the State was

pledged, both for the security of the capital and interest, which was to be promptly paid by the bank as the bonds should severally fall due.

The Constitution required that any act pledging the credit of the State should, in order to be valid, be re-enacted by the succeeding Legislature. This was done, and at the same time a supplemental act was passed by the subsequent Legislature in regard to the incorporation of subscribers, which was embodied in the original act, and somewhat modified its provisions. Under this blended enactment of legality and invalidity the larger portion of the bonds were sold, and hence the origin or rather the basis of the question, which has assumed various attitudes in its progress.

The repudiators contended that the supplemental act passed by the second Legislature so altered the provisions of the original act as to require the sanction of a third Legislature to give validity to any part of the proceedings; while the bond-payers urged that as the supplemental act confirmed, and did not alter that portion of the original act which created the State liability, the pledge was valid and binding; and this was the position maintained by the High Court.

Many and varied were the influences brought to bear upon the people in the fierce and prolonged contests between the respective adherents of these policies. It came to pass that the payment of these bonds by the State would have incurred a heavy tax upon all kinds of property, and a ruinous burden upon the prosperity of the State. This was a powerful incentive to popular indifference, if not to positive antagonism to their payment; and so far the repudiators, in addition to the charge of illegality, rested their position upon a law of nature. But even broader grounds were in time assumed, and it was declared that one generation could not bind another. This principle derives force from a celebrated letter of Mr. Jefferson to Mr. Madison, written from Paris in 1789; of which the following extracts are introduced, as well for the sake of the importance and novelty of the arguments as on account of their application to the question of Mississippi Repudiation, especially at this day.

Mr. Jefferson says: "The question whether one generation of men has the right to bind another, seems never to have been started either on this or our side of the water. Yet it is a question of such consequence as not only to merit decision, but place also among the fundamental principles of our government. The course of reflection in which we are immersed here on the elementary principles of society, has presented this question to my mind; and that no such obligation can be so transmitted, I think very capable of proof. I set out on this ground, which I suppose to be self-evident, that the *earth belongs in usufruct to the living;* that the dead have neither powers nor rights over it. The portion occupied by any individual ceases to be his when he himself ceases to be, and reverts to society, unless conventional laws have directed its future use. But no one takes it by natural right. Then no man can, by *natural right*, oblige the lands he occupied, or the persons who succeed him in that occupation, to the payment of debts contracted by him.

"What is true of every member of the society individually, is true of them all collectively; since the rights of the whole can be no more than the sum of the rights of the individuals. To keep our ideas clear when applying them to a multitude, let us suppose a whole generation of men to be born on the same day, to attain mature age on the same day, and to die on the same day, leaving a succeeding generation in the moment of attaining their mature age all together. Each successive generation would in this way come and go off the stage at a fixed moment, as individuals do now. Then I say, the earth belongs to each of these generations during its course, fully and in its own right. For if the first could charge it with a debt, then the earth would belong to the dead, and not to the living generation. Then no generation can contract debts greater than can be paid during the course of its own existence."

Yet, notwithstanding the ingenuity of his argument, Mr. Jefferson seemed to ignore the fact that, if there can be such things as demise and inheritance, even though they be purely conventional, they may also be coupled with conventional conditions, and the enjoyment in usufruct by the heir made to de-

pend upon the payment of the debts contracted by the ancestor, perhaps for the very rights which he has transmitted, and upon the simple ground that a thing is bound for the price of its purchase. It is not to be understood, however, from these remarks that the writer undertakes to decide upon the merits of this controversy on the question of the bonds; for, if the "vox populi" theory be correct, the will of Heaven has long since settled the whole matter.

Those who favored the payment of the bonds contended, first, for their legality, and then for the honor and credit of the State, which they conceived should be preserved at all events. Some abhorred the principle of public repudiation to such an extent as to dispose them to waive all doubts of their legality, in favor of their payment; and among these was the subject of this sketch. The stanch position of Mr. Clayton in opposition to repudiation debarred him, with many other men of eminence, from the preferments which his abilities merited, and which his popularity otherwise would have achieved.

He was a warm advocate of States rights, favored separation as the only mode of preserving them, and was a member of the convention that withdrew the State of Mississippi from the Union, and took an active and vigorous part in all the proceedings of secession, the right and justification of which he maintained to the day of his death.

Having lost his wife some years before, he was married in 1861 to Miss Laura Johnston, daughter of Gabriel Johnston, Esq., of Mobile, a lady of many noble qualities and accomplishments.

At the close of the war his aged mother was still living, and so soon as the affairs of the country would permit, he hastened to look after her welfare; and while on a visit to her with his family, he was stricken with disease of the heart, and died in Athens, Georgia, in 1867, in the house of his mother and the home of his childhood.

As a lawyer, Mr. Clayton was thorough, accurate, and vigorous; conspicuous for his ready grasp and tenacity of tenable positions, and for his ability to fasten conviction upon the minds of both judges and jurors. This was due to his masterly

knowledge of law, his brilliant logical powers, and his polished arts of suasion. His probity and integrity commanded universal confidence, while his amiable and courteous bearing engaged the most affectionate esteem of his brothers of the bar.

As a man his prominent characteristics were an uncompromising morality, a warm benevolence, and an attractive amiability, which were constantly displayed in every phase and condition of his life. He was from early manhood a member of the Methodist Episcopal Church, and was not ashamed to bear witness to the merits of religion and the efficacy of the cross. In all the relations of life Mr. Clayton was cherished and admired, and was pointed out by his fellow-citizens as a man upright in purpose, meek in spirit, pure in heart, circumspect in walk, and in every way worthy of imitation.

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## DAVID C. GLENN.

David Chalmers Glenn was born in the State of North Carolina about the year 1824, but, having lost his father, he was brought to Mississippi when a mere infant, and, at an early age, was placed in the law office of his uncle, Hon. J. W. Chalmers, who was then the partner of Roger Barton at Holly Springs. His early educational advantages were very limited, and he enjoyed, for the most part, only such as were afforded in a busy law office. But his ambition stimulated an application which, together with his rare natural endowments, soon enabled him to surmount all untowardness of circumstances, and, in 1842, when but eighteen years of age, he was admitted to the bar under omens of a propitious future. He had, however, no sooner achieved his entrance upon a successful career at the bar than, impelled by his ardent patriotism and fiery spirit, he embraced a warm interest in the political questions of the day, and, in 1844, entered the exciting canvass of that period, a young but brilliant champion of the Democratic cause.

His political speeches during the campaign attracted much attention and were highly applauded ; indeed, his able impeachment of the conduct of some of the Whig leaders, and his unan-

swerable arraignment of some of the measures of that party, displayed powers which designated him as the future attorney-general of the State.

In the fall of 1844, he removed to Jackson, where he soon attained to an extensive practice, and assumed his position as one of the most eloquent, energetic, and brilliant advocates before the bar of the High Court.

In 1848, he again felt himself called upon to enter the political field in support of the national nominees of his party, the principles of which he cherished with partisan devotion, and whose interest he considered as paramount to all other claims upon his talents. In this campaign he acquired additional reputation for political acumen, for brilliant logic, and for a superb and thrilling eloquence, which made him the favorite and pride of his party.

In 1849 he was chosen, by a large majority, attorney-general of the State, and acquitted himself in that office with such marked ability and satisfactory performance that he was re-elected, and even strongly urged to accept a third term, which he, however, declined, and, at the expiration of his second term as attorney-general, removed to Harrison County and took up his residence upon the sea-shore, where the buffetings of the pent waves were symbolic of the proud heavings of his own hampered spirit. But his retirement and choice of abode were not made with the spirit that dictated the message of the Grecian misanthrope. He mused no thought like this :

> " Come not to me again : but say to Athens,
> Timon hath made his everlasting mansion
> Upon the beached verge of the salt flood,
> Whom once a day with his embossed froth
> The turbulent surge shall cover."

Col. Glenn was ever ready to respond to the call of duty, and when the campaign of 1860 marshalled its ominous clouds along the political horizon, he came forth from " the beached verge of the salt flood" and his eloquent voice swelled from the capital of the State to its circumference. He was a member of the Charleston Convention, and mingled his thrilling strains with the eloquence of William L. Yancey. He was also a member of

the Mississippi Convention of 1861, which passed the ordinance of secession, of which he was a strenuous advocate, and was chairman of the committee on the formation of a Southern Confederacy. He had bitterly opposed acquiescence in the compromise measures of 1850; and the circumstances attending the admission of California into the Union convinced him that secession was the only alternative for the South. And it is certain that, if such a policy was to prevail, then was the time for its adoption. There was then no organized revolutionary party at the North, prepared to destroy the government and drench the continent in blood in the interest of fanaticism, and, if the South Carolina doctrine of co-operation had then been embraced, the country would, in all probability, have escaped the woes which afterwards befell it.

As a lawyer, the character of Col. Glenn needs no other eulogy than that proclaimed by his efficiency as attorney-general of Mississippi. He was a thorough lawyer, a brilliant logician, and a most eloquent advocate. He possessed in a high degree that *lactea ubertas* of diction which, while it flowed in placid streams or dashing torrents as the theme and occasion demanded, yet bore upon its surface the cream of thought and sentiment—that supreme excellence of oratory which, while it flashes with the ornaments of elocution, is yet characterized by "quot verba, tot pondera."

He was truly a high-spirited, generous, and magnanimous man; as patriotic as Cincinnatus or Regulus, as courteous as Chesterfield, and as chivalrous as the Chevalier Bayard. But no effort of mine could more eloquently describe his characteristics than they are set forth in the following tribute from the bar of the High Court of Errors and Appeals, and in the touching and pathetic remarks of Hon. T. J. Wharton on presenting the resolutions to the court. To these I am happy to defer all further efforts to do justice to the character of my subject.

At a meeting of the members of the bar of the High Court of Errors and Appeals, on the occasion of the announcement of the death of Hon. D. C. Glenn, on motion of W. P. Harris, Hon. E. S. Fisher was called to the chair, and Samuel Livingston appointed secretary.

The object of the meeting having been explained, on motion, the chair appointed T. J. Wharton, W. P. Harris, H. W. Walter, S. J. Gholson, and J. T. Harrison, a committee to prepare and report resolutions expressive of the feelings of the meeting; and thereupon the meeting adjourned to Saturday, January 9th.

On Saturday, January 9, 1869, the meeting was called to order, and Gen. W. S. Featherston, in the absence of Hon. E. H. Fisher, took the chair, when Hon. T. J. Wharton, chairman of the committee, on motion, reported the following resolutions regarding the death of Hon. D. C. Glenn, which were unanimously adopted:

The bar of Mississippi is again called upon to mourn the loss of one of its most distinguished members. The melancholy intelligence has reached us that the spirit of the gifted and chivalric David Chalmers Glenn, who was for many years the distinguished attorney-general of the State, has returned to the God who gave it, and all that was mortal of him has been consigned to the grave, there to repose until the resurrection morn; we, his friends and brothers, assembled from different portions of the State, have met to pay a last tribute of respect to his memory, and to mingle our tears of sympathy over his untimely fall. To attest our sense of the loss the State has sustained, we resolve:

1. That, in common with all classes, the bar of Mississippi have received with profound sensibility the announcement of the death of the Hon. David Chalmers Glenn, for many years an eminent member of the profession, and attorney-general of the State.

2. That we tender to the family and relations of the deceased our sincere condolence in the melancholy dispensation of Divine Providence which has been visited upon them, and the State, in the death of one so beloved and honored.

3. That the foregoing preamble and resolutions be presented to the High Court of Errors and Appeals, with a request that they be spread upon the minutes, and that the secretary furnish a copy to the family of the deceased, and also one to "The Clarion" for publication.

On motion of H. H. Chalmers, the chairman of the committee was requested to present the foregoing resolutions to the High Court of Errors and Appeals, and request that they be entered upon the minutes; and thereupon, after being addressed by William Yerger, Esq., the meeting adjourned.

On presenting these resolutions to the High Court, Hon. T. J. Wharton delivered the following eloquent eulogy upon the character of the deceased, which was published at the time by the request of the members of the bar:

"*May it please the Court:* At a meeting of the members of the bar, held in this chamber this morning, resolutions were adopted which, as chairman of the committee reporting them, I have the honor to submit, with the request that they be spread upon your minutes. I beg the indulgence of your honors, if I preface the reading of them with a few remarks which I trust may not be deemed inappropriate. It might seem superfluous, if not indeed presumptuous in me to utter a word after the very eloquent tribute which was paid to the memory of the deceased by the gentleman, Hon. C. E. Hooker, who announced to the court on Wednesday last the melancholy event which has occasioned the action of the bar. The apology I offer is, that for a period of nearly a quarter of a century, an intimacy, both personal and professional, existed between the deceased and myself, which was never interrupted for a moment. I was his immediate successor in the office of attorney-general of the State. In that, as in every position and relation of life, I was the recipient of his confidence and friendship. To those not so well acquainted with him, what I shall say will probably appear fulsome and extravagant; but to all who knew and appreciated him I confidently appeal.

"*David Chalmers Glenn* was a remarkable man. God had vouchsafed to him endowments rarely bestowed upon our race. He made his impress upon all with whom he came in contact. There was a *magnetism* about him, both charming and irresistible.

"He was beloved and honored in life, as he is now mourned in death, by all classes and professions of our citizens. The

memory of such men should not be allowed to perish with what is mortal in their nature. It is the sacred duty of the people, nay, of the commonwealth, to cherish with vestal fidelity the memories and the deeds of their illustrious dead. It is the achievements, the lives, the characters of its great men which make the history and constitute the true glory of every nation. The innumerable caravan, as generation succeeds generation, passing along the shores of time, is lost in the sea of oblivion. It is only the few, 'the immortal names that were not born to die,' that are remembered. The undistinguished dead return to dust and leave no record behind them.

"It was not more beautifully than truthfully said by that greatest intellect of the age in which he lived, Daniel Webster, 'that a superior and commanding human intellect, *a truly great man*, when Heaven vouchsafes so rare a gift, is not a temporary flame, burning brightly for a while, and then giving place to returning darkness. It is rather a spark of fervent heat, as well as radiant light, with power to enkindle the common mass of human mind; so that when it glimmers in its own decay, and finally goes out in death, no night follows, but it leaves the world all light, all on fire from the potent contact of its own spirit.' Another, pronouncing an eulogy on the author of that sentiment catches up the refrain, and as if in continuation, exclaims, 'No, sir, our great men do not wholly die; all that they achieved worthy of remembrance survives them. They live in their recorded actions; they live in their bright examples; they live in the respect and gratitude of mankind; they live in that peculiar influence by which one single commanding thought, as it runs along the electric chain of human affairs, sets in motion still other thoughts and influences, in endless progression; and thus makes its author an active and powerful agent in the events of life, long after his mortal portion shall have crumbled in the tomb.'

"Born in the State of North Carolina, the deceased came to Mississippi in infancy. With limited advantages of education, without experience, fortune, or patronage, but with that lofty intellect and those almost unrivalled powers of eloquence which have made his name familiar as a household word in this, his

adopted State, he entered upon that career which became so distinguished. When but a boy, he was taken into the law office of the Hon. J. W. Chalmers and the Hon. Roger Barton. Under their auspices he was introduced to public notice. He was probably the youngest man ever admitted to the bar in Mississippi. He was scarcely eighteen years of age when he was licensed. At that time the bar of North Mississippi shone resplendent with a galaxy of learning and talent unsurpassed, if indeed, ever equalled, in its history. At the same time he bounded into the political arena, and in the memorable contest of 1844, when all over the United States the intellectual giants of the two contending parties met, as Greek meets Greek, face to face, and when,

> 'Like fabled gods, their mighty war
> Shook realms and nations in the jar,'

David C. Glenn proved himself a foeman worthy of the steel of the tallest champion of the opposing party. Again in 1848, when the party with whose destinies his fortunes were identified was once more summoned to the field in grand national tournament, his clarion voice was heard resounding in strains of loftiest eloquence, from Tishomingo to the sea-shore. So in 1850–51, when the State and the Union were convulsed with excitement caused by the admission of California, he was found where the storm of battle raged hottest, and where the missiles flew thickest and fastest. His last and most brilliant campaign was in the national election of 1860, a struggle which culminated in the deplorable civil war, from which the country has so recently emerged, and in which, though borne down by superior numbers, our loved but stricken South challenged the admiration of the world by her almost superhuman exhibition of heroism and endurance. Though thus distinguished as a party leader and debater, the only political position he ever occupied was a seat in the convention of January, 1861. That body was composed of all the most distinguished men of the two parties in the State. Then and there, as always and everywhere before, D. C. Glenn was the earnest advocate of the same political opinions he espoused when he first appeared before the public ;

and it is not disparaging to others to say that he was at least the peer of the most distinguished of its members. But, if possible, his career in his profession was more conspicuous than in the political arena.

"In the fall of 1844 he moved to the capital of the State, and entered earnestly and actively upon the practice of his profession in the High Court of Errors and Appeals. The bar practising in that forum at that day might have safely challenged comparison with any bar in America, if not in the world. To attempt an enumeration of the illustrious names which adorned its annals would be both tedious and invidious. It is sufficient to say that the juvenile jurist commanded their respect and admiration.

"In 1849, having barely attained the age required by the constitution, twenty-five years, he was by an overwhelming majority elected attorney-general of the State. How he sustained himself in discharging the arduous and responsible duties of that important position may be inferred from his unanimous re-election for a second term. At the close of that term, he resisted all appeals to fill the station longer, and took up his residence on the sea-shore in the County of Hancock, where he continued to reside until his death. The reports of the decisions of the High Court, during the time he filled the office of attorney-general, are replete with the evidences of his learning, zeal, ability, and eloquence.

"But the '*divine* afflatus' which inspired his utterances, and carried irresistible conviction to the minds of his hearers, has died away even as the remembered tones of a mute lyre. That dark flashing eye, on fire with genius, that silver tongue with its mellifluous accents, that spare lithe form, trembling under the inspiration of the inner life, struggling for birth, are all remembered by those of us whose good fortune it was to behold him, 'when his blood was up, and the full tide of inspiration was pouring upon him.'

"To all these advantages was added a voice of surpassing power and sweetness, so perfectly modulated and attuned that its very *tones* expressed the thoughts of the speaker. His imagination, which was 'wild of thought and gay of wing,' was

chastened by culture, and enriched by the choicest collections from classic literature. He culled from the fields of history, romance, and poetry, and combined the rarest exotics with the productions of his own genius. But for all this, he never sacrificed an *argument* for a figure of speech. The embellishments of rhetoric were only added as a relief to himself and his audience. When such embellishments were employed, it was only because they were so apropos that they could not be kept back.

"Such is a feeble portraiture of him at the bar and before popular assemblies. To many of us he was linked by closer ties than any which his many intellectual powers could have created. The charm, the fascination of his manners, the warmth and spontaneity of his friendship touched and won the heart. But alas!

> 'The boast of heraldry, the pomp of power,
> And all that beauty, all that wealth e'er gave,
> Await alike the inevitable hour:
> The paths of glory lead but to the grave.'

"In the pride of mature manhood, in the high noon of his fame, his sun has set in the night of death; and nothing remains for us who survive, but to cherish his memory, and strive to imitate his example, in so far as it was crowned with virtue, honor and distinction."

## WALKER BROOKE.

Among those gentlemen of our bar who seemed to have been designated by nature for the profession of the law, there were few who possessed such indications in a more remarkable degree than the subject of this memoir.

Walker Brooke was born in the State of Virginia on the 25th of December, 1813, and there his boyhood and his youth were passed. His early scholastic advantages were good, and at the age of twenty-one years, he completed his education at the university of his native State, where he had given marked evidence of those intellectual traits which afterwards so highly adorned his character. Soon after retiring from the university, he began the study of law in the school of the celebrated Judge Tucker, one of the most eminent jurists of the Old Dominion, where he had every advantage that learning, refinement and the most distinguished example could afford. These opportunities were well improved, and Mr. Brooke was admitted to the bar with every prospect which a high order of talent and a thorough preparation could offer.

But finding his means inadequate to that probationary ordeal which, at that period, claimed many years of a young practitioner before he could assert a position at the bar of Virginia, he emigrated to Kentucky, and there taught school, during two years, in order to maintain himself until the door of practice should open to him.

But for this he possessed the unfailing "sesame;" and now turning his eyes toward that already illuminated legal field, he removed to Mississippi and located at Lexington in Holmes County, where his abilities were soon recognized, and he became immersed in a large and lucrative practice. His talents were also sought in another sphere, and he was several times returned as the representative of Holmes County in the Legislature, where his career was characterized as brilliant among the

eminent gentlemen who, at that period, took their seats in that body.

On the election of Senator Foote to the gubernatorial chair of Mississippi in 1851, Mr. Brooke was appointed to fill his unexpired term in the United States Senate ; in which his political acumen, stanch patriotism, and logical eloquence, attracted the notice of the whole country, and Mr. Brooke retired from this high position with the meed of an honorable efficiency, and with the laurels of a well-deserved reputation.

He was a member of the Mississippi Seceding Convention of 1861, and was appointed one of the committee of fifteen to report an ordinance of secession ; and while he sustained that measure, he was disposed to plunge not without caution into the abyss, and sought to impend its effect upon the contingency of an effort towards reconciliation. He also introduced a resolution to refer the whole matter to the action of the people at the polls, but such formalities and delays were not compatible with circumstances, or in accord with the spirit of the times ; and Mr. Brooke was swept along with the current. On the passage of the ordinance, he was chosen one of the delegates to the Provisional Congress of the Southern States at Montgomery, and in that body continued to favor the measures of prudence. He seems never to have entertained the sanguine views of many of his associates, and appeared more disposed to obey the dictates of a cool judgment than the fiery impulses of the moment.

He was during his whole life an inveterate and uncompromising Whig, and waged a fierce and relentless war upon Democracy ; by the leaders of which he was dreaded, while his party was a rival power in the State, as a fearless champion and a foe of no unworthy steel.

As a lawyer, Mr. Brooke was conspicuously imbued with the learning of his profession, and by his free indulgence of a taste and fondness for knowledge, had cultivated a familiar acquaintance with the whole field of literature. He had also thoroughly studied mankind, was versed in all the varied phases of human nature, and understood those which indicate and measure the virtues and vices of men ; hence he was a ready detective of their motives, and capable of unweaving the most intricate webs

of cunning and deceit. This faculty gave him great power, both in the elicitation of evidence and the elimination of truth, while his lucid method and simplifying analysis often substituted a willing conviction for that confusion with which the subtleties of a less experienced advocate often darken the minds of the jury.

His perceptive faculties were quick, penetrating and alert, and his cultured legal judgment weighed every fact in the scale of applicable law. His terse and forcible logic was blended with an earnestness and vigor that penetrated to the most obtuse understanding, while the candor and suavity of his manners so captivated the minds of his hearers that conviction anticipated reflection, burst every barrier of prejudice, and followed enchained in the wake of attention. There were few men who so blended the softer emotions of a generous nature with the ruder elements of a stern and dutiful professional regimen. Firm and uncompromising in the faithful discharge of a trust, and unswerving in his devotion to the interests of his clients, he was mild and courteous in his professional bearing, simple and cordial in all his dealings, and exhibited at all times a heart overflowing with the sentiments of charity and benevolence.

But in no respect was he more exemplary in kindness and amiability than in his deportment toward the younger members of the bar, a quality of kindness which seems to be inseparable from the traits that constitute true professional greatness. He was always ready to befriend them, both in counsel and in deed, and with a patience and alacrity as if his learning and experience were possessions in which they had a fee title of participation ; and there are many living members of the profession who, to-day, remember with grateful feelings his words and acts of encouragement, and cherish the hallowed impressions of his generous aid.

While Mr. Brooke enjoyed, during the space of nearly thirty years, a large and lucrative practice at the bar of Mississippi, his great hospitality, large-handed charity, and liberal expenditure, precluded the accumulation of fortune. He found his greatest pleasure in the happiness of his friends, and in the gratification of every wish of his family, by whom he was beloved and venerated to the depths of devotion.

He was married in 1840 to Miss Jane L. Eskridge of Carrol County, a lady adorned with many rare traits and accomplishments, by whom he had ten children.

His death, which occurred on the 19th of February, 1869, was attended by circumstances of a singular nature. He was eating oysters in company with some friends, in a saloon in Vicksburg, when, in endeavoring to swallow one of unusual size, it lodged in his throat, and, in his effort to expel it, it was forced into the trachea, and produced suffocation and insensibility : and although it was removed by a physician as soon as circumstances would permit, yet, so great was his prostration and the effusion of blood to his brain that it became the immediate cause of his death, which followed on the next day.

His death was deeply felt in the community in which he lived, and at the bar, of which he was a distinguished ornament, while the State mourned the loss of one of its purest patriots. The bar of Vicksburg paid a beautiful tribute to his memory, in which he was characterized as an ornament to his profession, an honor to his State, and a model father, friend, and citizen.

## JAMES C. MITCHELL.

James C. Mitchell was a native of Virginia, and was born near the celebrated Peaks of Otter, a circumstance to which in his joviality he attributed his lofty aspirations and untamable disposition, as well as his majestic stature. At an early age he removed to East Tennessee, and, having adopted the law as his profession, rose so rapidly in eminence and in popular esteem that, while quite a young man, he was elected to a seat in Congress, where the versatility of his genius, his unfailing flow of humor, and eccentric characteristics, procured for him popularity if not influence.

Mr. Mitchell, while eccentric in some respects, possessed the trait, unusual in such characters, of admiring that quality in others. While in Congress he was fondly intimate with the afterwards famous General Sam. Houston, whom he is said to have very much resembled and in whom he found an attractive congeniality; and so often were these two together that they were designated as "the couple." But the future hero of San Jacinto, with his unpretending manners, is said to have often complained that his friend Mitchell was too much disposed to promote his own consideration at the expense of his colleagues, and as an evidence of which he related that on one occasion the Tennessee delegation in Congress agreed to pay their respects in a body to a distinguished foreign minister who had lately arrived in Washington, and when they reached the door of his residence, Mr. Mitchell stepped forward and handed to the janitor a card upon which was inscribed "James C. Mitchell and the rest of the Tennessee delegation."

But this blended trait of joviality and egotism contained no vein of envy or malevolence. He was fond of notoriety, and especially of distinguished compliment, an instance of which he is said to have often related with great pride and complacency. He had delivered an able argument upon the tariff question, and on returning to his seat passed that of John Randolph, who, ris-

ing and taking his hand, said : "General Mitchell, I thank you, in the name of Virginia, for your eloquent and noble speech. I have not heard the like before, since I came into Congress, and I regard you as one of our most precious jewels, yes, sir, one of our most *precious jewels.*"

At the expiration of his term in Congress in 1828, he was elected to the circuit bench of Tennessee, and, as a judge, is said to have been zealous and efficient, and to have given grateful satisfaction to his constituency. On the bench his ambition and integrity of purpose were directed to the ends of justice, while his peculiarities were confined to a punctilious observance of propriety. His notions of judicial dignity and court decorum were rigid and sometimes ludicrously exacting. It is related that on one occasion, when he was presiding in the trial of a case of great importance, a young man with creaking boots passed several times across the court-room greatly to the annoyance of his honor, who finally, having exhausted his patience, exclaimed : "Mr. Sheriff, bring that young man before the court immediately !" Which having been done, the judge addressed the astonished culprit thus : "Pray, sir, how much did your boots cost you ?" "Ten dollars, sir," replied the young man. "Well," said the judge, "you will never be able to say that again. The boots shall cost you twenty dollars. Enter a fine of ten dollars against this young man for striding through the court-room in creaking boots."

Judge Mitchell was the author of a work entitled "Mitchell's Justice," a supply of which he is said to have carried with him around the circuit, and to have taken occasion on the first day of each term to intimate from the bench that all who desired a copy could procure one by calling at his private room.

He came to Mississippi about the year 1837, and located in Hinds County. He was then advanced in years, but had lost none of his colloquial versatility and facetious humor, and soon rendered himself popular with his new associates. He was fond of relating stories of which he was the hero, and was always ready to entertain his brother members of the bar, who frequently convened in his room after the forensic labors of the day to listen to his amusing narratives of the ludicrous events of his experience or the wonders of his own personal performance,

and which his brilliant imagination and highly wrought powers of description would clothe in all the colors of romance. As an instance of this kind, it is related that on one occasion the citizens of the town in which he resided while in Tennessee, arranged for a grand reception to be given to a distinguished citizen on his return home from a foreign mission, in which he had acquired much honor and distinction for his able and faithful services, "and," said he, "as I was known to be versed in the etiquette of Washington, whence I had lately returned, I was appointed to deliver the welcoming address, which I did in a style truly satisfactory, and with so much grace that it was in consequence arranged also that I should escort the accomplished daughter of the ex-minister to the ball to be given that night, and engage her in the first set. To all of which I most pleasedly consented, and when the dance began I led my charming partner out. There were at least fifty couples upon the spacious floor, and, while gracefully weaving her through the mazes of the contra, I occasionally whispered the most delicious sentiments in her ear, until completely charmed with my agility and gallantry the fair creature exclaimed, pathetically, 'Oh! Col. Mitchell, how I do wish that you were not a *married man.*' 'Most adorable lady!' said I, 'I will assure you that at least a thousand of your sex have expressed the same wish;' and, at this moment, seeing a vacant space adjacent, I leaped fully ten feet from the side of my fair partner, and, gracefully whirling, turned to the astonished lady, and waving my hand in token of respectful submission to her approbation, I said, 'Pray, Miss, what do you think of that.' To which she replied, 'That, sir, was certainly the most extraordinary feat I ever witnessed, and I can only apply to you the words of Lord Byron in his description of George the Fourth:

> 'Without the least alloy of fop or beau,
> A perfect gentleman from top to toe.'

The success of Judge Mitchell at the bar was due more to his bold assumptions, to the startling postulates which his imaginative powers and copious flow of speech clothed with a confusing plausibility, and to his ready wit, than to any profound depth of learning or logical acumen—more to a superb genius than to

any solid legal attainments. His disposition was too much of a social character, and he was too fond of the pleasantries of society to submit to the restraints of close application, and his spirits too exuberant to bear the jealous monotony of professional routine. He was more the political than the legal advocate, and had few superiors on the stump. He was a Whig in politics, and a warm admirer of General Harrison.

It is related that, during the presidential campaign of 1840, some Democrat in one of the piney woods counties of Mississippi had among other things accused General Harrison of cowardice at the battle of Tippecanoe, where he claimed to have been present and to have witnessed his misconduct; and it happened that while Mr. Mitchell was making a speech at a large gathering in that county in the interest of his favorite, he espied the individual who had made this assertion, and calling his name, asked:

"Did you say that you were at the battle of Tippecanoe, and that you saw General Harrison display evidences of cowardice?"

*Answer.* "I did."

*Judge Mitchell.* "Did you see me there, sir?"

*A.* "I do not remember seeing you."

*Judge M.* "Yet, sir, I was there, and was constantly by General Harrison's side, and if you had been there, you would have seen me." Then turning to the audience, he exclaimed, "See, fellow-citizens, how easily a lie can be refuted."

A short time before his death he was a candidate in Hinds County for a seat in the Legislature, and it is said that in a joint discussion before a large assemblage of the people of the county, Judge Mitchell, summoning his remarkable powers of ridicule, assailed his opponent with such a torrent of derision that the latter, losing all patience, exclaimed: "Judge Mitchell, when you descend from that stand I will whip you." "That you may do," said the judge, "but it will not elect you; for I remember that when I was a boy my father owned a bull that could whip all the other bulls in the neighborhood; yet I never heard it urged that his bullyism fitted him for the Legislature."

Judge Mitchell died at his home in Hinds County in 1843.

# CHAPTER X.

## THE BENCH—EMINENT JURISTS—1850–1880.

WILLIAM YERGER—WILLIAM L. HARRIS—EPHRAIM S. FISHER—EPHRAIM G. PEYTON—COLLIN S. TARPLEY.

THIS chapter closes the dead list of the eminent gentlemen who occupied seats upon the bench of the High Court of Errors and Appeals of Mississippi. Many of their contemporaries and some of their associates upon the bench are still living, and it is hoped that they may long live to enjoy that high station in the respect, love, and veneration, of their fellow-citizens, which their great abilities, model characters, and illustrious services have so justly merited; and that they may long look with pride upon the full fruition of peace, happiness, and prosperity, under that reign of justice to the establishment of which their precepts and examples have so greatly conduced; and that by reason of length of days, they may, if possible, achieve even more good than did their distinguished compatriots who have preceded them to that court of competent awards where the meed of virtue is found in the approving smiles of Omnipotence.

## WILLIAM YERGER.

This great and good man was born in Lebanon, Tennessee, on the 22d of November, 1816. The family of Mr. Yerger was of Dutch origin. His parents were prosperous and highly respected. His early educational advantages were good, and he was graduated from the University of Nashville, where he also studied law, before he was twenty-one years of age, and was immediately admitted to the bar.

In 1837 he removed to Mississippi, and settled in the town of Jackson, where he at once began that splendid career which culminated in the most brilliant reputation, and most lucrative practice at the bar of Mississippi. The politics of Mr. Yerger, which were those of the Whig party, precluded him from the political preferments to which the versatility of his genius and his ambition might have aspired; but so stern and uncompromising was his integrity that no glitter of prospect could induce him to swerve from the strict line of his principles. Indeed, so fixed and rectified were his conscientious resolves, that neither the frown of tyranny nor the applause of flattery, the smiles of fortune nor the whirlwinds of adversity, could shake them from the firm base of his convictions; but if the shattered heavens had fallen upon his head, the ruins would have buried him clad in the robes of conscious rectitude.

But, notwithstanding his politics, and known hostility to some of the popular measures of the day, which were likely to become of judicial cognizance, so great was his ability as a lawyer and his worth as a man, that they finally wrenched the tribute of even partisan recognition, and in 1850 he was elected by the popular vote to a seat upon the High Bench of Errors and Appeals. During the civil war he was a member of the Legislature, and in the convention of 1865 and throughout the dark days of reconstruction he was active and strenuous in his efforts for the restoration of the State government and the amelioration of the condition of his people.

In contemplating the character of Judge Yerger we are dazzled by the uniformity and constancy of its glow. There are no jetting traits to serve as landmarks to the analysis. There are no conspicuous planets or brilliant constellations to arrest our gaze. No glaring meteors flash along the sky. No auroras or milky ways usurp broad tracks in the firmament, but the whole canopy, from the zenith to the horizon, blazes with one common, uniform light, such as flows from the full round orb of day. The qualities of his head and heart were in constant equipoise, so that it is difficult to judge which was the most vigorous of his virtues—whether his main springs of action vibrated most from the touch of judgment or benevolence, patriotism or philanthropy, piety or pity.

On his first appearance at the bar of Mississippi, where he immediately came in contact with some of the most eminent legal minds of the country, though scarcely past the threshold of manhood, he exhibited a depth of learning, a penetration of judgment, and a knowledge of human affairs, unsurpassed by the precocious intellect of Lord Chatham. Sedate, dignified and respectful in his bearing, he was utterly free from the frivolities and indiscretions that frequently attend one of his age and conscious powers. His conduct and conversation were apparently impressed with the mould of experience, and were so striking as to require no aid of ostentation to give them prominence.

His perception was quick and penetrating. His language expressive and chaste ; and he came into court with success and reputation stamped upon his brow. Certainty followed in the train of his virtues, and step by step, in rapid succession and with the unbroken continuity of time, Judge Yerger climbed to the proud eminence of his fame.

As a lawyer he had few superiors on this continent. He had studied deeply every department of jurisprudence, was profound in all the branches of the profession, and the great principles of law had become identified with his own judgment.

Nature seemed to have bestowed upon him every qualification in her power for the eminent sphere in which he moved, and

these the culture of severe and systematic training had polished and blended into abilities of rare brilliancy and outline.

At the bar his powers of reasoning, of comprehension, of perception, and of the exercise of sound judgment, were so equally prominent and poised, that no faculty of his mind seemed to claim superiority or predominance; but if there was any one trait that might be designated especially as the key to his success as an advocate, it was the capacity for making a lucid presentation of his case—for presenting a concise synthetical summation of facts, a forcible and convincing application of law, for disrobing his adversary of all false color and superficiality, and for whittling the question down to the very hinge of fact and gist of legal merit. The powers of his intellect moved with the order and regularity of a well-adjusted machine, with all its parts under the perfect control of the motive power. He subjected every grain of fact, and every texture of law to the stern crucible of inflexible justice.

His powers of oratory were characterized by no hyperbolical display, or gewgaws of declamation. His eloquence, which was always compatible with his theme, aimed at no deception or hallucination, but his suasion appealed directly to the bench of judgment and the bar of justice.

As a judge of the High Court of Errors and Appeals, Mr. Justice Yerger developed only in a more public manner his great abilities, and the eminent traits of his character. His learned, copious, and lucid decisions, glare with immortal splendor upon the pages of Mississippi jurisprudence. Whilst he was the soul of amiability and courtesy, he was self-reliant and independent in his views, and positive and determined in his opinions.

In the great case of The State of Mississippi *v.* Johnson, 25 Mississippi Reports, 625, which involved the liability of the State for the payment of the bonds of the Union Bank, notwithstanding that the opinion of the court fixing liability upon the State had been delivered by Mr. Chief Justice Smith, and in which Judge Yerger fully concurred, yet he saw proper to deliver his individual opinion, and with the fate of Dentatus peering in his face, he placed his back against the constitution and laws of the State, and turning his front to the people, de-

fied the penalty of his integrity. This decision, though powerful, clear and unassailable, so far as concerned the law of the case, was not accepted by the dominant political party, and was as fatal to the official preferment of Judge Yerger as was the defence of Queen Caroline to the professional advancement of Lord Brougham.

When every effort had been made to control the opinion of Lord Mansfield, in the case of Rex *v.* Wilkes, that great judge took occasion to make the following illustrious observations from the bench :

"I pass over the many anonymous letters I have received. Those in print are public, and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong way. I will do my duty *unawed*. What am I to fear? What *mendax infamia* from the *press* which daily coins *false facts* and *false motives?* The lies of *calumny* carry no terror for me. I trust that my temper of mind, and the color and conduct of my life, have given me a suit of armor against *these* arrows. If during this king's reign, I ever supported his government and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought *right*. If I have ever opposed, I have done it upon the points themselves, without mixing in *party* or *faction*, and without any collateral views. I honor the king and respect the people ; but many things acquired by the *favor of either*, are, in my account, objects *not worth ambition*. I wish POPULARITY, but it is *that* popularity which follows, not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of *noble ends* by *noble means*. I will not *do* that which my *conscience* tells me is *wrong*, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press ; I will not *avoid* doing what I *think* is *right*, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credulity of a deluded populace can swallow. I can say with a great magistrate, upon an occasion and under circumstances not unlike, '*Ego hoc animo semper fui, ut invidiam virtute partam gloriam, non invidiam, putarem.*' The

last end that can come to any man never comes too soon, if he falls in support of the *law* and *liberty* of his country, for liberty is synonymous to law and government."

.The following are extracts from Judge Yerger's opinion, presenting his reasons for the separate enunciation of his views, which, like Lord Mansfield, he entertained unshaken by opposition and unswerved by circumstances.

"While I concur most fully in the opinion of the court, pronounced by the chief justice, I deem it proper to express my individual opinion upon the questions presented by the record, and to give some of the reasons which have influenced the formation of that opinion.

"The importance of the questions in controversy will justify, if they do not require, this course. Every member of the court has given to this question an attentive and careful examination. The important and interesting questions arising in it, and which were presented in a novel and unusual manner, were well calculated to evoke a most patient investigation.

"On the one hand a private individual presented himself before the judicial tribunals of the State, alleging that he had a just and legal demand against the State, the payment of which had been refused; that this demand consisted in the bond of the State, sealed with the great seal, signed by the governor and treasurer, and executed and delivered to him, pursuant to an act of the Legislature, by which the faith of the State was pledged for its payment and redemption.

"On the other hand, the State of Mississippi denied the validity of this bond, alleging that it was sealed and delivered by the governor without authority, and that the act of the Legislature, from which he pretended to derive his power, was unconstitutional and void, and that no contract or agreement made under it created any valid obligation binding upon the State.

"We are not unaware of the unusual interest which these questions have excited for many years, and that they were at one time the subject of an animated political controversy.

"But sitting here as judges to administer the law, under the solemn sanction of our oaths, we have endeavored to discard from our minds every extraneous and improper influence, and to

address ourselves, without bias, to the candid examination of the legal questions presented by the record. As judges, it is our duty to declare the law, not to make it. Reasons of State policy or political expediency should not influence our judgment. It is our duty to decide the law of the case as it appears upon the record, regardless of all consequences. Entertaining these views, and having formed my opinion in accordance with them, I am only anxious to explain the grounds on which I have proceeded, so as to satisfy the mind that the judgment given in the case is the only one which could have been given in accordance with the rules of law. . . . In this matter we have no discretion ; the path of duty is plain and obvious. As the constitution and laws have authorized suits to be instituted against the State, it is the duty of the court to pronounce judgment in them, as in all other cases that may come before it.

"As the plaintiff has appealed to the judicial tribunals of this State, the matters in controversy must be decided according to the constitution and laws of Mississippi, and to those rules of law which regulate and govern alike the contracts of States and the agreements of private individuals."

Mr. Justice Yerger then proceeds to exhibit in a clear and unmistakable light the competency of the agency of the governor and treasurer, and the liability of the State, alike as individuals, for the acts of its agents done within the scope of authority :

That the contract on the part of the State, which required the sanction of two successive Legislatures, was not impaired by the mere technical and model changes made by the supplementary act, but that it was sufficient if the identical section of the original act creating the liability was re-enacted by the subsequent Legislature. That the introduction of new and additional provisions in the supplementary act could not defer the validity of the original act to the sanction of a third succeeding Legislature.

That the provision of the supplemental act admitting the State as a stockholder did not destroy the identity or change the character of the corporation : That corporations are not affected by a change of the individuals who compose them.

But that "State policy and political expediency," which Judge Yerger declared to be of no avail upon the bench, continued to thwart by its inaction the execution of the law as expounded by the High Court, until the "carpet-baggers" in their Constitution of 1868 relieved the people of the State from all responsibility, and all unpleasant contemplation of the question, by forever foreclosing and precluding the liability of the State for the payment of these bonds.

Judge Yerger possessed a mind of the most fertile resources, and was never at a loss for apt illustration; while he seemed to spurn the subtle process of abstraction, he penetrated and explored every feature of a question with the lantern of Diogenes. Eschewing the Baconian system of slow and tedious induction, he preferred the Socratic method of practical investigation and rapid conclusion. He followed the train of reasoning with a glance, and his judgment grasped the truth as if by intuition.

There was no field of knowledge closed to his view, and his genius sought the summit of every social elevation. The great kindness of his nature was at all times manifested, whether upon the bench or at the bar, in friendly companionship or in the domestic circle; his heart pulsated with a benevolence that shed around him a halo of benign and attractive influence. His sympathies were always with the weak, the afflicted, and the distressed; and so warm and free was his charity, that they never failed to obtain succor at his hands. The widow and the orphan were the objects of his unfailing solicitude, and they always found in him a champion ready to devote his utmost energies to their cause.

Every imposition of power, every infringement of right, and every unjust act, were objects of his indignation, and awakened his sympathies for the sufferer, and he was ever ready to invent and advise the proper means of obtaining redress.

In the case of *ex parte* Adams, 3 Cushman, 883, the prisoner had been committed for contempt by the judge of the Circuit Court for refusing to answer questions propounded to him by the grand jury, and applied to the judges of the High Court for a writ of *habeas corpus*. The sympathies of Judge

Yerger were evidently awakened in behalf of the prisoner, but how to effect his enlargement was the question.

The right to punish for contempt was inherent, and pertained to all courts of justice, independent of any statutory power. The acts and judgments of the Circuit Court concerning all matters within its jurisdiction were binding and conclusive, until set aside or reversed by some authorized appellate power. The legality of their judgments could not be questioned. The power to discharge from commitments for contempt was expressly excluded by the *habeas corpus* act. What could be done for the prisoner? Judge Yerger turned to the record. The order of committal lacked an expression of conviction. It was not lawful to imprison a person without conviction and judgment, both of which must appear upon the record. The prisoner was discharged.

Mr. Justice Yerger was a man of great forbearance and self-possession. He was never known to violate the rules of professional propriety; under the severest test of patience, in the heat of the fiercest forensic contests, he preserved a dignified composure, and courteous equanimity towards court, counsel, and witness; like Lord Chesterfield, he considered politeness as the lubricator of society—the crowning jewel of personal graces. Not to roughen, but to smooth the path of others, he recognized as the great duty of man to man.

The following instance of his self-sacrificing devotion to the welfare and happiness of others was related by Judge Potter:

"He and other distinguished counsel were, with myself, concerned in a most important cause. It so happened that papers pertaining to that cause, and which might possibly become very important in the future progress of the suit, were a part in his possession and a part in mine. One night about midnight, toward the close of his illness, being seized with one of those paroxysms of pain and nausea incident to his disease, he requested his son to hasten for his physician; but at that moment his thought seems to have turned to that suit, and he directed his son to sit down first and write notes to Judge Johnston and myself, informing us where to find those papers in his possession, and requesting us to place them all together

in a safe place. With the pains of death upon him, he thus waived the call of his physician and the relief that his skill could give, that he might provide for the security of another. Those papers must be cared for before he would think of himself."

The physical powers of Mr. Justice Yerger were never equal to his moral and intellectual. They constantly struggled under the heavy burden of his professional labors until, finally, in the full bloom of his manhood, and in the height of his usefulness and fame, his small and feeble body bent beneath the burden of his intellectual treasures, and, no longer able to withstand the demands of his energy and the attrition of his mind, sank exhausted into the sleep of death. His name is forever blended with all that is virtuous as a citizen, eminent as a lawyer, and righteous as a judge. He died in the city of Jackson on the 7th day of June, 1872.

The following proceedings were enacted at the bar of the Supreme Court on the announcement of his death :

"On the meeting of the Supreme Court, on Saturday, the 8th day of June, 1872, after the minutes were read and signed, the Chief Justice announced that, in consequence of the death of William Yerger, and out of respect to his memory, no business would be taken up on that day, and the court was ordered to be adjourned until 10 o'clock on Monday following, and on the adjournment of the court the following proceedings were adopted by the bar :

"On motion, Chief Justice Peyton was requested to preside over the meeting, and the clerk of the Supreme Court was appointed secretary.

"On motion, the chair appointed a committee to draft resolutions expressive of the feelings of the members of the bar in regard to the death of William Yerger.

"The following gentlemen composed the committee : Wiley P. Harris, William L. Sharkey, George S. Potter, Thomas J. Wharton, and Amos R. Johnston.

"On motion, it was

"*Resolved*, That the members of the bar of Jackson, as a mark of respect to the memory of their deceased brother, Judge William Yerger, will attend the funeral in a body, and that the

judges and officers of the Supreme Court, and of the other courts of the city, be requested to attend also.

"On motion of General Freeman the meeting then adjourned until 11 o'clock on Monday.

"JACKSON, Monday, June 10, 1872.

"Pursuant to adjournment the meeting was called to order by the Chief-Justice, when W. P. Harris, on the part of the committee, reported the following preamble and resolutions:

"William Yerger, the great citizen, our neighbor, our friend, our brother, is dead; and we, assembled to render customary honors, lack words to declare his worth and the magnitude of our loss. No memorial that we can frame would fitly present him, all worthy and admirable, as he deserves to be remembered. The testimonies of his life, his daily goings out and in among us, are a brighter record than any we can offer.

"To declare him pre-eminent and faithful upon the bench, at the bar, in the halls of Legislature, and in his whole course of public duty as a citizen, is to utter but part of what we know is justly due to his memory.

"Devoted to his profession, and diligent in the use of extraordinary abilities, Judge Yerger possessed vast acquirements in the law, and there arose no question in the profession that seemed beyond the scope of his powers or range of his studies. His intuition was wonderful, and he seemed to reach, by thought, the right conclusion, to which others came by laborious study. A devoted advocate of the just rights of his client, Judge Yerger was ever the exemplar of perfect courtesy, and although most sensitive and high-spirited, he so possessed the power of self-control that, in the course of a long practice, it is not remembered that he ever violated the courtesies of the profession. He was a man of strong convictions and positive opinions, but, nevertheless, he possessed so much and such gentleness of grace that, in all his intercourse, he was ever and pre-eminently the brotherly man, the faithful friend, the composer of strife, the promoter of good, and the advocate of peace and virtue.

"For many years Judge Yerger enjoyed, perhaps, the largest and most lucrative practice in the State; but, notwithstanding the excessive labors it imposed and the strong temptations of accumulating gains, he never, so far as known, turned a deaf ear to the claims of the friendless or the widow or orphan, but, as we know, freely gave time and labor and talents to secure or defend their rights. Of him it may be truly said, 'He delivered the poor that cried, and the fatherless, and him that had none to help him.'

"The death of such a man, so capable and so worthy, is not only a family bereavement, but also a public loss, a great loss to the judiciary and to the State and country; be it, therefore,

"*Resolved*, That we cherish with abiding affection and reverence the memory of our departed brother, William Yerger, and we tender sincere and affectionate sympathy to his sorrowing family.

"*Resolved*, That we wear the customary badge of mourning for thirty days.

"*Resolved*, That the Attorney-General be requested to present the proceedings of this meeting for record in the Supreme Court; that a copy thereof be delivered to the family of the deceased, and that copies be published in the newspapers of the city."

On presenting these resolutions, Judge Wiley P. Harris made the following appropriate and beautiful remarks:

"MR. CHAIRMAN: Before asking the adoption of the resolutions which have just been read, I will say a few words upon the deeply interesting but melancholy subject to which they relate.

"The deplorable event, the bare dread of which has hung like a cloud over this community for the past three or four months, has at last occurred. In spite of the prayers of the good, in spite of that mute appeal which the great needs of the community and the country made in behalf of one so eminently wise, good, and useful, we have lost WILLIAM YERGER.

"How much this sad utterance, now heard on all sides, means to the State, ill prepared to lose any of her supports, with laws

and institutions recently and radically remodelled, and yet untried; how much to the community in which he dwelt, and which looked to him as counsellor and guide; how much to his family and kindred; how much to the profession to which he belonged, and to the high rank and reputation of which he so much contributed—it is difficult to estimate. Certainly we are more likely to underrate than overrate the magnitude of the misfortune. A great and beneficent light has been extinguished in our midst. We shall see its brightness and feel its warmth no more forever. An estimate of his character, so far as we are capable of estimating it, will serve to convey some idea of the extent of the loss we have sustained.

"It is not for me to attempt to measure the intellectual stature of William Yerger, nor to point out and define those traits of mind by means of which he built up a splendid and lasting reputation. I may refer, however, to the manifestations of his great powers, which were obvious to all.

"Prior to the war his political opinions excluded him from public political life—that theatre on which the display of great intellectual strength attracts the largest share of public attention. He was, however, elected to a seat on the bench of the High Court of Errors and Appeals, and he at once made himself famous there. I will only recall to your mind, Mr. Chairman, his great judgment in that greatest of cases, in which the issue was the liability of the State to pay the Union Bank bonds. In the face of a popular feeling violent and proscriptive, and which had carried men into office, and driven men from office, he firmly and fearlessly declared that the State was legally, as well as morally, bound to pay these bonds.

"He was a member of the Legislature during the war, and after the war a member of the Convention of 1865, which had to deal with many grave and difficult questions. His profession drew him into the discussion of the greatest questions which arise in the jurisprudence of a country; and without going into particular instances in which he displayed his almost unrivalled abilities, I may sum them up by saying that he was always equal to the occasion, and always rose to the full height of every question, whatever it chanced to be, which was presented to him.

or upon which he was called to speak or act. His perceptions were singularly quick and clear, and the vigorous activity of his mind without any parallel in my observation of intellectual men.

"The resources of his mind were rich and varied, and were always under his instant and absolute control. His capacity for intellectual labor was, it seemed, almost without limit. Sir Walter Scott defines talent to be a capacity for intelligent intellectual labor; if so, William Yerger's talents were really transcendent.

"It was in the legal forum that he displayed to us more frequently the wonderful strength and fertility of his mind. His learning was accurate and complete, and he had, moreover, that which learning may improve but cannot supply. It was said of Lord Hardwicke that he had an intuitive perception of the law; and this rare gift William Yerger possessed to a degree that was almost startling. He could, with apparent ease, unravel the most entangled controversy, and there was no question of law so difficult or turbid, by contradictory precedents, that he could not readily see to the bottom of it. We all had occasion to admire the sure-footed sagacity with which he managed a cause in court. He never hesitated, nor stumbled, nor blundered.

"He had, in addition to these extraordinary powers, traits which heightened their effect, and which denote a superior mind and a superior man; and these were, a temper under complete control, and a uniform decorum and moderation of language; and he taught us, among many other fine lessons, that this kind of forbearance was compatible with the highest attainable success.

"But, Mr. Chairman, these imposing and brilliant intellectual traits, admirable as they are, do not account for that strong hold he had upon the minds and hearts of men, nor for that marvellous personal sway which he acquired over all who knew him. There is another side of his character about which I can speak with greater confidence, because I am better able to comprehend it. He was thoroughly and pre-eminently a good and generous man. Surely the bright flame which warmed and illuminated

that capacious mind was kindled in the heart. It is this which explains why it is that so many persons not connected with him by the ties of kindred or the engagements of business feel his death to be to themselves a peculiar personal misfortune. To this we owed that kindly warmth of manner, the genial smile and brightening eye in his cordial greeting of his acquaintance. His generous heart flowed freely in friendship, kindness, and sympathy to everybody.

"Lord Clarendon, in his fine delineation of the character of John Hampden, notes the singular personal sway which he acquired over all who came in contact with him; and it seems, indeed, that the king against whom he was fighting felt this sway, for when Hampden was wounded fighting in the Parliamentary army, the king sent his own surgeon to attend him. Speaking of the charm of Hampden's character and manners, Clarendon says: 'He had a flowing courtesy towards all men.' I could never contemplate the character of William Yerger, and cannot contemplate it now, without recalling this fine portrait; and I have never thought that the great fame of Hampden suffered by the comparison.

"To this kindly and genial spirit we owed the exhibition of the liberal hospitality which he dispensed. He was truly 'given to hospitality,' and hospitality in him was of that high quality which exalts it into a noble virtue. Poverty was no check to this spirit in him, and it was in his house that one learned that hospitality was not made of bread and meat alone. Indeed, it seemed to me that the most acceptable thing he offered to his guests was himself. He would set himself to work with persevering diligence and tact to compel the dullest man and the dullest company to enjoy themselves, and this was his constant habit, whether host or guest.

"These qualities, however, though pleasing to contemplate, merely contributed to the amenities of life. His rich nature held treasures far more precious. He was the most useful person I ever knew. No man, burdened as he was, ever did as much hard work gratuitously for other people as he; nay, with or without the burden, for when he was asked for help, his own burden seemed to grow as light as a feather. How he contrived

to do so much is to me a real mystery, and, besides, I am convinced, and the conviction does not spring merely from personal admiration, that he went about this work with a positive relish. He was always willing, always ready, and what is more to the purpose, he always tried, and tried zealously, and rarely failed.

"During the stress of the civil war, and especially during that dreary period which followed the military occupation and government of the State, many people got involved in sore trouble. He was not exempt himself, and yet he busied himself night and day with the troubles of his neighbors, as though he had no cares of his own. He seldom, if ever, spoke of them.

"His firmness and unconquerable spirit, coupled with his high character and reputation, secured the respect of the military men in command here, and gave him a certain influence which he employed for the noblest purposes. He never exerted it for himself. In those days people flocked about him as though there was healing in his touch.

"The resolutions declare truly that he was the friend of the friendless, the widow, and the orphan. How many, how very many of these, felt the protection of his sheltering hand! It always seemed to me that he regarded himself as expressly commissioned to take charge of them. He responded for them in the courts; and if William Yerger was found evincing uncommon zeal and exhibiting more than his usual anxiety; if he was found ransacking the libraries and fortifying himself with books, you might know from these signs whose case he had in charge.

"It is needless to inquire what he was as the head of a family. From what we know of him otherwise, we would naturally conclude that a beautiful harmony reigned in his household, and this is true. In his professional relations he was not only void of offence, but made his example a standard of propriety. A quiet dignity of bearing and decorous language marked his intercourse with the bench and bar; indeed, he seemed to have no deficiency.

"Such was the man we have lost; such the loss to which we must now reconcile ourselves. I have touched his admirable character here and there—conveying, I know, but a faint im-

pression of its great excellence. The theme is very fruitful, but I am conscious that there are around me many of his friends whose feelings prompt them to say something on this sad occasion, and I give way to them."

Eloquent and touching tributes were then pronounced by Mr. Justice Simrall, Judge Handy, General T. J. Wharton, Judge Morris, and Judge Potter.

The resolutions were then unanimously adopted, and Chief Justice Peyton responded as follows :

"The court unites with the bar in honor to the memory of our departed friend, William Yerger, and receives with profound sensibility their resolutions commemorative of his life and virtues, and eminence as a jurist. Possessing a vigorous mind, diligent habits, earnest and honest purposes, and liberal views, kind and benevolent in his disposition and affections, and simple and unaffected in his manners, his life was one of dignity and usefulness. The memory of such a character and such a life goes far to soften the sorrow we feel for the loss society and the country have sustained. At the call of Him who gave it, he yielded up with Christian resignation a life full of years and full of honors, and a bright example to mankind.

"For a limited period he was a distinguished ornament of this bench, and the integrity, learning, and ability exhibited by him while he dignified the ermine of justice, are to be seen in the impartiality and equity of his judgments. These judgments remain, and are his best monuments. While the records of this court endure they will recall the memory of the just and fearless magistrate who pronounced them, and will be esteemed as valuable contributions to the jurisprudence of his country.

"We cherish his memory with affectionate recollections, and feel that the just tribute of the members of the bar will be soothing to the hearts of his bereaved family, and will be an enduring memorial of a character truly exemplary in every department of life, and one which lawyers and judges may emulate with advantage.

"As a testimonial of honor, of affection, and of sorrow, the court will order that the proceedings of the bar, with this response, be entered on the minutes."

## WILLIAM L. HARRIS.

William Littleton Harris was born in Elbert County, in the State of Georgia, on the 6th of July, 1807. He was the son of General Jeptha V. Harris, and his maternal grandfather was Major Richardson Hunt, both of whom were men of high character and influential standing. His ancestors moved from Virginia to Georgia prior to the American Revolution, and left numerous descendants. His parents reared a family of twelve children, to the education of which they devoted themselves with such care, anxiety, and affection as to attract the admiration of their neighbors and friends, and inspire feelings of deep and lasting filial veneration. They lived to a very great age, and saw their children all matured and married, the father having attained, at the time of his death, the age of seventy five years, and the mother having reached the longevity of eighty-two.

The early educational advantages of William L. Harris were good, and after the usual academical preparation he entered the University of Georgia at Athens, at the age of fifteen, and graduated in 1825. On finishing his collegiate course he immediately applied himself to the study of the law, and in 1827, being yet under legal age, he was admitted to the bar by special legislative enactment, and began the practice of law in the town of Washington, in Wilkes County, which was included in what was, at that time, designated as the northern judicial circuit of Georgia. Among the practitioners at the bar of this circuit at that period were many gentlemen of eminence, and afterwards of renown, such as Augustus B. Longstreet, Joseph H. Lumpkin, Garnett Andrews, William C. Dawson, Alexander Pope, Robert Toombs, Alexander H. Stephens, and many others of distinction; yet amid this brilliant array of talent Mr. Harris rose rapidly in his profession, and soon achieved a conspicuous place in this galaxy of legal luminaries, and from whom he, no doubt, learned those lessons of professional vigor, devotion, and profundity, which characterized his entire career at the bar.

But, notwithstanding his prospects and the position he had achieved at the bar of his native State, the unlimited resources, unbounded prospects, and prolific harvest of litigation, which had already attracted so many eminent lawyers to Mississippi, now presented their allurements to his ambition, and in 1837 he removed hither and settled in the town of Columbus.

To this new and inviting field, which afforded a scope so commensurate with his ambition, he transported a vigorous diligence, a stern integrity, an unswerving professional faith, a genius, and a knowledge of law, which enabled him, almost at a bound, to take his position in the very front rank of the profession.

In 1853 he was elected judge of the Circuit Court of the sixth judicial district of Mississippi; and in this position he administered justice with an ability and rectitude that gave the utmost satisfaction and received universal admiration.

In 1856 he was appointed by the Legislature to co-operate with Judges William L. Sharkey and Henry T. Ellett of the supreme bench in revising and codifying the laws of Mississippi, which was performed in a most thorough, skilful, and able manner, and which was adopted, during the next year, at a special session of the Legislature, and is known as the Revised Code of 1857.

At the expiration of his term, in 1857, Judge Harris was reelected to the circuit bench, and, in 1858, he was elevated to the bench of the High Court of Errors and Appeals.

In 1860 President Buchanan tendered to him a seat upon the bench of the Supreme Court of the United States, to fill the vacancy occasioned by the death of Mr. Justice Peter V. Daniel, of Virginia, but this appointment Judge Harris declined in consequence of the approaching and foreseen disruption of the Federal Union. He spurned the honors of an office which might place him in an attitude of official hostility to measures the adoption of which he foresaw would be the only alternative to the degradation of his people.

In 1865 he was again chosen one of the judges of the High Court of Errors and Appeals of Mississippi, but upon the overthrow of the Johnson reconstruction in 1867, and the remand-

ment of the State to military control and the malignant vengeance of the Radical party, Judge Harris, together with Judges Handy and Ellett, the other members of the court, resigned his seat upon the high bench, and, resuming the practice of his profession, he removed to Memphis, Tennessee, and there formed a copartnership in law with Judge Ellett and Colonel James Phelan, who had late been a Senator from Mississippi in the Confederate States Congress. This firm, composed of men of such distinguished ability and reputation, enjoyed in this ample field every promise of a brilliant career; but in the following year, Judge Harris was suddenly attacked with a violent pneumonia, and died, after a short illness, on the 27th of November, 1868, leaving a family of seven children, his wife having died in the preceding spring.

The life and character of Judge Harris are kindling incentives to that honorable ambition which finds its satisfaction only in the distinguished performance of high public trusts, to that patriotism which derives more happiness from the faithful discharge of public duties than from the attainment of the most coveted private ends, and to that conscious rectitude which finds its reward in the commendation and applause of all good men, and in the smiles of Heaven which mirror themselves upon the unruffled surface of a clear conscience.

When such men die it behooves us to pause and contemplate the instructive lessons which their lives have inscribed upon the great chart of human existence, for the purposes of paying proper reverence to their memories and of gathering up the noble inspirations which continue to emanate from the hallowed tracks of departed worth. To review and record the qualities of one who has reaped the highest esteem of his fellow-citizens, is a custom which finds its sanction through all ages down to the very depths of antiquity, and to which we owe the great lessons of virtue, the landmarks of greatness, and the beacons of fame which have given light to the generations of earth, and pointed mankind to a higher and nobler sphere. Hence to cite examples of the different features of true greatness is by no means difficult, but to analyze and interpret the varied measures and varieties of qualities that enter into its composition is a task

of different import, and we will find ourselves met by insuperable barriers at the very threshold of the investigation. There we will find Genius blurring the vision with its dazzling train and mocking at every effort to discover its source, and by its side Wisdom with its Argus eyes, whose peer is far beyond the superficial scope of vulgar gaze. There Honor's helm flashes an effulgence which but for its rarity would kindle a faith that would glorify the world; and there is Charity, distilling her gentle drops into the hearts of the unfortunate, and soothing the festering ulcers of human woes, blessing alike him that gives and him that receives. Memory is there, with its tablet of gilded inscriptions. Perception is there, with the Sphinx glare of its penetrating glance; and there is Judgment, with the staff of reason in one hand and the plumb-line of truth and justice in the other. There Virtue marshals her white-robed train, and hallowed Piety reigns the sceptred lord of all.

What pen can depict the characters of this gorgeous court? What ambassador from the realms of Metaphysics can penetrate its secret councils and describe its rivalries and its harmonies? Surely we must retire from the labyrinthian threshold and await the dénouement of the heralds of action. With this conviction let us return to the subject of this sketch, and confine ourselves to the contemplation of features whose sources we may not invade.

As a lawyer, William L. Harris possessed every quality requisite to pre-eminence. He was thoroughly familiar with the fundamental principles of law, and skilled in all the details of the profession. His quick and penetrating perception and sound judgment enabled him to seize at once upon the pivotal points of every question, and to gather every fact within the embrace of the proper legal principle, while his logical powers asserted themselves in the lucid statement of his cases, the clear deduction of his conclusions, and in both the analytical and synthetical modes of reasoning.

Subsidiary to his acknowledged abilities, he possessed a chivalric sense of honor, a stern love of justice, and a flowing sentiment of sympathy which caused him to become, as it were, identified with his clients, and their cause became adopted as

his own ; hence he possessed the unbounded confidence of his patrons, while his dignified bearing and amiable demeanor gained the favor of the court, the sympathy and good-will of the jury, and the respect and admiration of the bar. To say that such qualifications achieved honor and success would be to repeat what has already become a maxim in the progress of this work, and an uncomely repetition of that which the mind of the reader has already embraced.

On the bench the career of Judge Harris would have adorned the ermine of any country, and in any age : as conscientious and upright as Lord Chief Justice Hale, he possessed the penetrating vision and brilliant perception of Lord Mansfield, the equitable poise of Eldon, and the intuitive judgment of Hardwicke. His decisions are delivered in a neat, elegant, and lucid manner. The scope of his judgment is always comprehensive, his elucidation conspicuous and convincing, while his verbiage is characterized by a fluent and chastened simplicity.

His style is pure without ostentation, his sentences forcible without verbosity, his judgments impartial, and fixed immovably upon the firm foundations of law. His great familiarity with the leading decisions both of the American and English courts afforded him at all times ample precedent and analogy, while his own comprehensive and acute conceptions of general principles enabled him, with or without precedent, to apply the law with unerring hand to the complete vindication of justice.

But such comments may be useless, if not tedious, to the professional reader. The decisions of Judge Harris speak for themselves. They are the best monuments of his genius, the brightest and most durable urn of his greatness ; and to them let the professional reader address himself for the great lessons which they teach—lessons inculcating the example of an able lawyer, a conscientious man, and a learned and upright judge.

While Mr. Justice Harris devoted his whole life, almost exclusively, to the forum, he was a man of firm and decided political principles. Making his début into manhood about the time of the formation of the old States Rights party in Georgia during the year 1835, he espoused its doctrines with a devotion that never swerved throughout the vicissitudes of peace, war,

or reconstruction. In defeat as well as in victory he adhered with equal firmness and unshaken conviction to the political teachings of his youth.

On the triumph of the Black Republican party and the election of Abraham Lincoln to the Presidency, he believed that the only hope for the Southern States was in a disruption of the Union, and he advised secession at all hazards, as the only remedy for the overwhelming evils that threatened the country.

On the 30th day of November, 1860, the Legislature of Mississippi, convened under the call of the Governor, passed a series of resolutions authorizing and requesting the Governor of the State to appoint as many commissioners as he might deem necessary and proper to visit each of the slaveholding States and inform them that the Legislature of Mississippi had passed an act calling a convention of the people for the purpose of considering the existing threatening relations of the Northern and Southern sections of the Union, which had been greatly aggravated by the election of a President on principles of hostility to the States of the South, and to solicit the co-operation of those States in the adoption of such measures as might be necessary for their common safety and defence.

In pursuance of these resolutions the Governor appointed Judge Harris to visit his native State and present to the Legislature of Georgia the resolutions and wishes of the Legislature of Mississippi. He repaired immediately to Milledgeville, where he was received with the most distinguished consideration, and, on December 15th, he delivered the following address before the Georgia Legislature :

"*Mr. President and Gentlemen of the Senate and House of Representatives of the State of Georgia :* I am profoundly sensible of the delicate and important duty imposed upon me by the courtesy of this public reception.

"Under different circumstances it would have afforded me great pleasure, as a native Georgian, reared and educated on her soil, to express to you fully the views which prevail in my State in relation to the great measures of deliverance and relief from the principles and policy of the new administration, which are there in progress.

"I cannot consent, however, upon the very heel of your arduous and exciting session, to avail myself of your respectful courtesy to the State I have the honor to represent, as well as your personal kindness to her humble representative, to prolong the discussion of a subject which, however important and absorbing, has doubtless been already exhausted in your hearing by some of the first intellects of your State, if not of the nation.

"I beg, therefore, to refer you to the action of Mississippi—already submitted to your Executive—to ask for her the sympathy and co-operation she seeks for the common good, and briefly to suggest to you some of the motives which influence her conduct.

"I am instructed, by the resolution from which I derive my mission, to inform the State of Georgia that Mississippi has passed an act calling a convention of the people 'to consider the present threatening relations of the Northern and Southern sections of the Confederacy, *aggravated* by the recent election of a President upon principles of hostility to the States of the South, and to express the *earnest* hope of Mississippi that this State will co-operate with her in the adoption of *efficient measures* for their common defence and safety.'

"It will be remembered that the violation of our constitutional rights, which has caused such universal dissatisfaction in the South, is not of recent date. Ten years since, this Union was rocked from centre to circumference by the very same outrages of which we now complain, only now *aggravated* by the recent election. Nothing but her devotion to the Union our fathers made, induced the South *then* to yield to a compromise, in which Mr. Clay rightly said we had yielded everything but our honor. We had then in Mississippi a warm contest, which finally ended in reluctant acquiescence in the compromise measures. The North pledged anew her faith to yield to us our constitutional rights in relation to slave property. They are now, and have been ever since that act, denied to us, until her broken faith and impudent threats had become almost insufferable *before* the late election. There were three candidates presented to the North by Southern men, all of whom represented the last degree of conservatism and concession which their

respective parties were willing to yield to appease the fanaticism of the North. Some of them were scarcely deemed sound in the South, on the slavery question, and none of them suited our ultra men. And yet the North rejected them all; and their *united* voice, both before and since their overwhelming triumph in this election, has been more defiant and more intolerant than ever before. They have demanded, and now demand, equality between the white and negro races under our Constitution: equality in the honors and emoluments of office, equality in the social circle, equality in the rights of matrimony. The cry has been, and now is, 'That slavery must cease or American liberty must perish,' that 'the success of Black Republicanism is the triumph of anti-slavery,' 'a revolution in the tendencies of Government that must be carried out.'

"To-day our Government stands *totally revolutionized* in its main features, and our Constitution broken and overturned. The new administration, which has effected this revolution, only awaits the 4th of March for the inauguration of the new government, the new principles, and the new policy, upon the success of which they have proclaimed freedom to the slave, but eternal degradation for you and for us.

"No revolution was ever more complete, though bloodless, if you will tamely submit to the destruction of that Constitution and that Union our fathers made.

"Our fathers made this a Government for the white man, rejecting the negro as an ignorant, inferior, barbarian race, incapable of self-government, and not, therefore, entitled to be associated with the white man upon terms of civil, political, or social equality.

"The new administration comes into power under the solemn pledge to overturn and strike down this great feature of our Union, without which it would never have been formed, and to substitute in its stead their new theory of the universal equality of the black and white races.

"Our fathers secured to us, by our constitutional Union, now being overturned by this Black Republican rule, protection to life, liberty, and property, *all over the Union*, and wherever its flag was unfurled, whether on land or sea.

"Under this wretched lawless spirit and policy, now usurping the control of that Government, citizens of the South have been deprived of their property, and for attempting to seek the redress promised by the compromise laws, have lost their liberty and their lives. Equality of rights secured to white men, in equal sovereign States, is among the most prominent features of the Constitution under which we have so long lived.

"This equality has been denied us in the South for years, in the common Territories, while the North has virtually distributed them as bounties to abolition fanatics and foreigners, for their brigand service in aiding in our exclusion.

"Our Constitution, in unmistakable language, guarantees the return of our fugitive slaves. Congress has recognized her duty in this respect by enacting proper laws for the enforcement of this right. And yet those laws have been continually nullified, and the solemn pledge of the compromise of 1850, by which the North came under renewed obligations to enforce them, has been faithlessly disregarded, and the Government and its officers set at defiance. Who now expects these rebels against the laws passed by their own consent and procurement—rebels against justice and common honesty—to become pious patriots by the acquisition of power? Who now expects Mr. Lincoln to become conservative, when the only secret of his success and the only foundation of his authority is the will and command of that robber clan, whose mere instrument he is, who have achieved this revolution in our Government by treading under their unhallowed feet our Constitution and laws, and the Union of our fathers, and by openly defying high Heaven by wilful and corrupt perjury?

"And, above all, who is it in the South, born or descended of Revolutionary sires, *who so loves such company* as that he will long hesitate before he can obtain the consent of a virtuous and patriotic heart and conscience to separate from them *forever?*

"Mississippi is firmly convinced that there is but one alternative:

"This *new Union* with Lincoln Black Republicans and free negroes, *without slavery*, or slavery under our old constitutional

bond of union, *without* Lincoln Black Republicans, or free negroes either, to molest us.

"If we take the former, then submission to negro equality is our fate. If the latter, then secession is inevitable—each State for itself and by itself, but with a view to the immediate formation of a Southern Confederacy, under our present Constitution, by such of the slaveholding States as shall agree in their conventions to unite with us.

"Mississippi seeks no delay; the issue is not new to her people. They have long and anxiously watched its approach. They think it too late now to negotiate more compromises with bankrupts in political integrity whose recreancy to justice, good faith, and constitutional obligations, is the most cherished feature of their political organization.

"She has exhausted her rights in sacrificial offerings to save the Union, and nearly all is lost but her honor and the courage to defend it. She has tried conventions until they have become the ridicule of both our friends and our enemies—mere instruments of fraudulent evasion and delay, to wear out the spirit of our people and encourage the hopes of our common enemy. In short, she is sick and tired of the North, and pants for some respite from eternal disturbance and disquiet. She comes now to you, our glorious old mother—the land of Baldwin, who first defiantly asserted and preserved your rights as to slavery, in the Federal Constitution, in opposition to Messrs. Madison, Mason, and Randolph, and the whole Union, except the two Carolinas; the land of Jackson, who immortalized himself by his bold exposure and successful overthrow of a legislative fraud and usurpation upon the rights of the people; the land of Troup, the sternest Roman of them all, who, single-handed and alone, without co-operation, without consultation, but with truth and justice and the courage of freemen at home on his side, defied this National Government in its usurpation on the rights of Georgia, and executed your laws in spite of the threats of Federal coercion—it is to you we come, the brightest exemplar among the advocates and defenders of States rights and State remedies, to take counsel and solicit sympathy in this hour of our common trial.

"*I ask you, Shall Mississippi follow in the footsteps of*

*Georgia, when led by her gallant Troup?* Or is it reserved for this generation to repudiate and expunge the brightest page in the history of my native State? Impossible! God forbid it! Forbid it, ye people of all Northern and Western Georgia, who to-day owe your existence and unparalleled prosperity to the maintenance of your rights at the risk of civil war!

"I see around me some gallant spirits who bore their share in the dangers, and now wear with honor, here to-day, in this hall, the laurels won on the side of their State, under the banner inscribed 'Troup and the Treaty,' in that memorable struggle. Need I appeal to them, in behalf of my adopted State, to know on what side they will range themselves in this struggle of right against usurpation, of brute force against the constitutional rights of a sister of this confederacy of equal States? I make no such appeal; I know where you stand. To doubt it would be to offer you the grossest insult. In this school of republican orthodoxy I drew my first breath. It was here I first studied, then embraced, and next feebly advocated, the principles of State rights and State remedies, of resistance to tyranny, of the supremacy and sovereignty of the people of a State, and the subserviency of governments to their peace and happiness and safety. These principles will descend with me to the grave, where this frail tenement of dust must perish, but *they* will live on with time, and only perish when tyranny shall be no more.

"I need not remind your great State that thousands and thousands of her sons and daughters, who have sought and found happy homes and prosperous fortunes in the distant forests of her old colonial domain, though now adopted children of Mississippi, still cling with the fond embrace of filial love to this old mother of States and of statesmen, from whom both they and their adopted State derive their origin. It will be difficult for such to *conceive* that they are not still the objects of your kind solicitude and maternal sympathy.

"Mississippi indulges the most *confident expectation and belief*, founded on sources of information she cannot doubt, as well as on the existence of causes operating upon them alike as upon her, that every Gulf State will stand by her side in defence of the position she is about to assume; and she would

reproach herself, and every Georgia son within her limits would swell with indignation, if she hesitated to believe that Georgia, too, would blend *her* fate with *her* natural friends; her sons and daughters — her neighboring sisters in the impending struggle.

"Whatever may be the result of your deliberations, I beg to assure her, from my intimate knowledge of the spirit and affections of our people, that no enemy to *her* constitutional rights may consider his victory won while a Mississippian lives to prolong the contest. 'Sink or swim, live or die, survive or perish,' the part of Mississippi is chosen: *she will never* submit to the principles and policy of the Black Republican administration.

"She had rather see the last of her race—men, women and children—immolated in one common funeral pile than see them subjected to the degradation of civil, political, and social equality with the negro race."

The Legislature of Georgia appointed a committee to request of Judge Harris a copy of this address, and ordered it to be printed, together with all the proceedings attending his reception.

It may not be improper in this place to observe that, notwithstanding the patriotic glow and sound orthodoxy which pervade this speech of Judge Harris, it exhibits, in regard to the real and paramount issues of the great struggle, a misconception which characterized the views of most of the distinguished men of the South. The very feature which he seems to dread and abhor above all others—the forced equality of the races—was the only impossible phase of the contest, and one which, so far as social equality is concerned, resulted in a direction entirely opposite to his fears. The Southern people seem never to have fully comprehended the nature of the civil war which they waged for four years with a vigor and determination never before witnessed by this world.

The slavery question was made a hood to blind the eyes of all true lovers of liberty in both sections of the country. Upon this ground the Southern people were induced to take issue; and here all the elements of the strife were gathered, while in

the background stood the Republican leaders planning a revolution of the entire system of government. The real issue was an obliteration of the doctrine of States rights, and a transfer of all sovereignty, practically, to the General Government. They well knew that the power on the part of the Federal Government to make war upon the States was an assumption of all other powers, and that a paramount allegiance to that government being once admitted, the revolution would be complete; the full sovereignty of the National Government would be established; there could be no *imperium in imperio*, and the States would virtually become mere police districts, with nothing but mere police powers.

But not even these escaped invasion. The States were robbed of their control of the qualifications of suffrage and the management of elections, and both public and private institutions were for a time actually forced into subserviency to the views of the party in possession of the National Government.

With the lights now before us the aspect becomes almost inconceivable when we look back to the confined views of our most distinguished men in regard to the issues involved in the war.

If Judge Harris could have then seen what he lived to discover—that the contest on the part of the Federal Government was really for consolidation and complete sovereignty—his noble arguments in defence of secession would have assumed a more comprehensive scope, and his predictions would have been, if possible, of a more serious nature, so far as they would have affected a greater number of people. Such an issue, if foreseen and presented with the same ability as were the horrors of negro freedom, would have aligned thousands, who fought on the other side, in the ranks of the Confederacy, and thousands of others who remained neutral from a misapprehension of the true nature of the conflict. This issue was by no means a mere collateral and incalculable result, but was, from the first, the logic of the teachings and the gist of the doctrines of the Radical Republican party; but it was smothered, first by the cry against slavery, and then, after the heart of the South had become fired with resistance to the assault upon their institutions, it was drowned in the cry for the preservation of the Union.

To this Union, so long as it moved in the orbit in which it was projected, no patriot was more devoted than Judge William L. Harris. He gloried in its greatness and power, and in the wisdom of its Constitution, which he had thoroughly mastered. He comprehended fully all its features and understood all their bearing and import. And had he accepted the position offered him as one of the judges of the Supreme Court of the United States, his patriotism, his political integrity, and his ability as a constitutional lawyer, added to his other qualifications, would, doubtlessly, under ordinary circumstances, have rendered him pre-eminent among the great jurists who have occupied that bench, and his constitutional interpretations would have had a conservative weight and a benign influence upon the welfare of the country.

Judge Harris was a man of amiable disposition. He possessed a flowing warmth of friendship and kindness, an unassumed and polished courtesy, and a patent sincerity, that attracted the respect and admiration of every circle. He was just and uniform in his estimate of virtue. There were none so high as to escape the exactions of his measure of propriety, and none too low to feel the warmth of his sympathies.

His liberality was bounded only by his means of exercising it, and, notwithstanding a lucrative practice and the temptation to accumulate wealth, the idea of gain was to him a matter of subordinate consideration. This was perhaps due, in a great measure, to his abomination of mere gloss and superficiality. He was exceedingly *matter of fact* and unostentatious in his manners, and this feature of his character was manifested to a remarkable degree at the very close of his life. A few moments before he expired he turned to Dr. Mann, who was present to whisper in his ear the last consolations of religion, and said, "Perform for me the last funeral rites; but I beg that whatever you may have to say, let it be plain and simple."

## EPHRAIM S. FISHER.

Ephraim S. Fisher was born near Danville, Kentucky, on the 15th of November, 1815, and was educated in the college at that place, in which his proficiency was marked by rapid progress. He early manifested a thirst for knowledge and an aptitude in its acquisition which gave unmistakable assurances of his destiny. So moral and assiduous was his deportment and so scholarly his attainments, that while yet a student he was employed as an assistant tutor. On retiring from college he engaged in teaching a country school, and, having determined to prepare himself for the bar, pursued the study of law during the intermissions of his preceptorial duties.

In 1833, impelled by an ambition alert for more flattering prospects, he emigrated to Mississippi, and resided for some years in Vicksburg, where he became connected with the clerk's office, and at the same time pursued his legal studies under the instruction of Joseph Holt. In 1838 he obtained his license from the High Court of Errors and Appeals, and immediately entered upon his brilliant professional career at the bar. He practised, however, only about one year in Vicksburg, and in 1839 removed to North Mississippi and located at Coffeeville. Here he entered at once upon a large and remunerative practice, which was interrupted only by the popular demand for his political services. He was elected to the Legislature, but, having served one term, declined the re-election offered him, and devoted himself exclusively to his profession. About this time he married Miss Martha A. Towns, an estimable lady, the accomplished daughter of Colonel Armistead Towns, a wealthy and genial planter of Yalobusha County. They reared a large and interesting family, of whom five daughters and two sons, and their mother, are now living. The professional success and popularity of Mr. Fisher continued to increase until he occupied an eminent position at

the bar, and in 1851 was elected to the bench of the High Court of Errors and Appeals, which position he held until a short time prior to the civil war, when he resigned and returned to the bar. Judge Fisher was opposed to the policy of secession. He had always been a Clay Whig in politics, and deprecated the idea of a dissolution of the Union. He seemed to have a premonition of the consequences, and a prescient estimate of the terrible results that would attend its failure; but when he saw the irresistible tide sweeping over the country, he accepted the situation and threw himself into the current. He voted for Mr. Davis to be President, and during the war accepted a colonelcy in the Home Guards, and took an active part in enlisting the old men for the purpose of encouraging the people.

In 1865 he was nominated for Governor of Mississippi by the Constitutional Convention. He was at that time attending to some professional business in Washington, and returned to Mississippi only a few days before the election. This circumstance and the indifference he manifested in regard to the office were fatal to his chances of obtaining it. He, no doubt, saw, while in Washington, the humiliating attitude in which the party controlling the Federal Government was preparing to place the sovereignty of Mississippi, and was reluctant to accept a position which he foresaw would be fraught with so much responsibility and vexation.

After the war Judge Fisher resumed the practice of his profession, but in 1869 was appointed by Governor Alcorn to the bench of the Circuit Court. In 1876 he removed to Texas and located in Georgetown, where he continued the practice of law in copartnership with one of his sons, but died suddenly a short time afterwards. Mr. Wirt says of the distinguished Robert Goodloe Harper that, while apparently in good health, standing before the fire, and reading a newspaper, "He dropped down dead;" and the death of Judge Fisher, which occurred on the night of the 12th of October, 1876, took place under somewhat similar circumstances. He had just partaken of a hearty supper with his accustomed *prandial* joviality, and was sitting by the fire discussing in a gleeful manner with his

son the logical triumph of the open letter of Hon. Jeremiah Black to Mr. Garfield, which had just appeared, and then turning to his son, who had but a moment returned from an attendance on court, requested him to go in to his supper and return quickly; that he had some important business to transact with him, alluding to a case in which they were employed. His son finished his supper, and calling to his father, who had walked out on the portico, announced himself ready. The Judge re-entered the room, and suddenly placed his hand upon his forehead. His son inquired the cause of his agitation. He replied that he felt a severe pain over the eye, and laid down on the bed, but became immediately unconscious, and died within an hour.

Judge Fisher was thoroughly familiar with legal science. His mind eagerly grasped the great principles of his profession, and he delighted in unfolding their intricacies and applying them untrammelled by technicalities to the promotion of the ends of justice. He considered that fundamental principles were the best criterion and measure of justice, and he found in them an embrace for every legal right which fact or circumstance could engender; hence he made them the standard of his policy at the bar and of his opinions on the bench. He was quick and adroit in the detection and disposal of technical ruses and logical subtleties, and in grasping the true points involved in obscure and difficult questions. He was searching and accurate in his discrimination of applicable law, and vigorous and clear in advocating his convictions and setting forth his conclusions. His decisions are characterized by a depth of learning and a glow of conscience, and while they display no rhetorical efforts, they are logical in method, chaste in style, and lucid in argument.

The career of Judge Fisher, both at the bar and on the bench, presents a uniform example of lofty purpose, conscientious dealing, and punctilious devotion to duty. Nothing could swerve him from the *solida mens* of conscious integrity, and while he may not have had any one professional feature of transcendent brilliancy, he possessed that admirable poise of qualities and exact adjustment of qualifications which rendered

his character conspicuous and attractive from every point of observation. He was noted for the warmth of his kindness and the flowing generosity of his disposition, and while his learning, urbanity, and candor received the tribute of esteem from the members of the bar and his associates on the bench, his sincerity and honesty gained for him the respect of all parties and of all classes of people.

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## EPHRAIM GEOFFREY PEYTON.

This upright and eminent judge was born near Elizabethtown, in the State of Kentucky, on the 29th of October, 1802. To this place his ancestors had emigrated from Virginia, where they could trace their origin back to the earliest settlement of the Old Dominion, and indeed far away in the annals of English history. At an early age young Peyton was sent to the college at Gallatin, and was there joined by his cousin, the distinguished Colonel Bailie Peyton, who was a youth of about the same age.

At the age of seventeen young Peyton left college, and in company with an older brother emigrated to Mississippi in search of fortune and a home. His brother was ambitious of achieving distinction as a lawyer, but on reaching Natchez they found their means so nearly exhausted that they were compelled to seek a livelihood by different modes. Ephraim became a printer's boy, in which capacity he served until he had earned means sufficient to renew his search for more congenial and favorable prospects. This he soon partially achieved, in obtaining a small school in the forests of Wilkinson County, near Woodville. Here he maintained himself and at the same time studied law until, having acquired a sufficient knowledge of its principles, he proceeded, in 1824–5, to Natchez, where the Supreme Court of the State was then sitting, and after the most rigid examination of those times was admitted to the bar as one of three among twelve applicants. Having obtained his license

he filled his saddle-bags with law-books, and going forth, penetrated into the wilds of the interior in search of a suitable location. In this plight he arrived at Gallatin, the seat of justice of Copiah County, where the court was held in a log-cabin. Here he began his career as a lawyer, and soon afterwards, by means of his professional income, established a mercantile house at Grand Gulf on the Mississippi ; and while engaged in this dual vocation he married Miss Artemisia Patton, the daughter of a wealthy and influential planter of Claiborne County. He now settled permanently at Gallatin, and there were all his children born, fourteen in number, but nine of whom reached the age of their majority.

Mr. Peyton had also, prior to his marriage, embraced the error common to most young lawyers of ability and promise, and allowed himself to be diverted by the allurements of politics.

"As I now recollect," says the Hon. Albert G. Brown, "I first saw Mr. Peyton on the 4th of July, 1826, more than fifty years ago. He was then a young and very handsome man. The occasion was the celebration of the national anniversary. The place was a grove, near the centre of where the old town of Gallatin once stood. The guests of note were the then candidates for Governor and Lieutenant-Governor. To my boyish mind he seemed to be a splendid specimen of humanity, and when in riper years I came to know him better, I found no occasion to change that opinion.

"Mr. Peyton was the orator of the day. All that I recollect of it is that his speech was highly applauded. The candidates and the people gathered around him, and seemed by their congratulations to indicate that he had made a great speech. In the evening he was hoisted by an enthusiastic multitude on a table, and announced himself as a candidate for the Legislature. When the votes were counted at the election, it was first supposed that he had been chosen, and his friends were wild with enthusiasm. But on a closer count it was found that he had been beaten by a tally of five votes. The next year he was a candidate again, and was chosen without serious opposition. He served a single term in the Legislature, and after that persistently refused to compete for any political office."

In 1839, however, Mr. Peyton was elected District-Attorney for what was then the fourth judicial district, and was re-elected several times to the same position, until, worried with the duties of the office, and desiring to return to general practice, he resigned in the midst of a term, very much to the regret of the people, who fully appreciated his efforts towards maintaining the dignity and efficiency of the laws, in the preservation of order and the prevention of crime. The election of Mr. Peyton from this district, which was intensely Democratic, was a noble tribute to his ability as a lawyer and his integrity as a man, paid him regardless of his political principles, which were those of the Whig party, and of which he was a warm and unswerving advocate.

He was bitterly opposed to the policy of secession, and his lifelong antipathy to the measures of Democracy arrayed him after the war in the ranks of the Republican party, in which his great abilities brought him at once to the front rank, and in 1868 he was appointed by Governor Alcorn a judge of the Supreme Court of Mississippi. In 1870 he was chosen Chief Justice of the State, which position he held until the expulsion of his party from power by the election of 1875.

Chief Justice Peyton was a profound and accomplished lawyer. He had, from his first adoption of the profession, studied law in the most scientific and scholarly manner, and his success at the bar was the just fruition of eminent ability and stanch integrity. So assiduous was his application that it is said by Hon. A. G. Brown, who read law under him and was well acquainted with his habits and characteristics, that for fifty years he studied law each day as if he was preparing to be examined for the bar on the next.

During all these years of devoted labor, throughout the extended scope of his professional sphere, amid the multiplied concerns of a busy life and the varying fortunes of his party and people, he preserved a spotless integrity and stainless honor.

His political opinions were grounded in the depths of conviction, and his policy was cast in the mould of long-cherished principles; and however antagonistic they may have been to the in-

terest of his people, not a breath of suspicion ever sullied the sincerity and honesty of his motives.

His mind was vigorous and active, and, in addition to its large stores of legal learning, possessed resources gathered from every branch of science. While he delighted to delve in the rugged field of his profession, his sentimental nature and refined taste gathered the gems of romance and the flowers of æsthetics; yet his imagination never led him to neglect the realities of life for the mere visions of fancy. His attention was attracted but not beguiled by that literary curiosity which often allures a man of genius from his chosen pursuit and engages his powers in the wasting diversions of inutility. Capable of great application, and full of the ardor of a versatile genius, he devoted himself with severe restraint and indefatigable zeal to the attainment of all useful and refining knowledge. He spent a large portion of his earnings for books, and at the time of his death his law and miscellaneous library was valued at many thousand dollars, and was said to have been the most comprehensive and best selected private library in the State. This advantage, in view of his assidious habits of study and investigation, accounts for the superabundant resources of precedent and the ready familiarity with legal history, which he exhibited in his contests at the bar.

But it was as a judge of the Supreme Court that he won his brightest laurels. It was here that his fearlessness of character, his uncompromising regard for truth and justice, and his extensive knowledge of law, were most strikingly exemplified. He blended, in an admirable manner, the stern features of the judge with the sympathetic attributes of the philanthropist. The warp of his justice was woofed with mercy, and the rigorous requirements of law were tempered with the gentle mandates of equity. His decisions will remain a more noble and enduring monument of his ability and integrity than any that could be outlined by the pen of history or constructed by the skill of art.

He occupied this position during a period when many novel questions arose pertaining to the attitude of the State towards the General Government, which the leaders of his party claimed to have been radically changed by virtue of secession and the result of the war. While in this respect his opinions may

not have met the approbation of those who took a purely historical view of the fabric of our Government, yet his judicial purity, his unblemished personal character, his great learning, and uniform prudence and regularity of conduct, gained the general confidence of his fellow-citizens at a time when the vicious attitude of his party in Mississippi kindled the fires of partisan animosity throughout the State.

His integrity was sustained by an unfailing physical as well as moral courage. Whatever his conscience dictated or his judgment approved he dared to maintain, and was fierce in his resentment of the least assault upon his honor or invasion of his dignity. While he was Chief Justice, he was approached on one occasion by the notorious Adelbert Ames, then Governor of Mississippi, who visited him privately for the purpose of inducing him to exercise an influence over his son, who was one of the chancellors of the State, in his decision of a case in which the Governor felt himself interested. The Chief Justice spurned the corrupt overture with the most violent indignation, and ever afterwards hated both Ames and his administration.

After his retirement from the supreme bench, in the fall of 1875, he sought refuge from the rugged field of long labors and the asperities of his public life in a home sweetened with repose, but lighted only by the smiles of filial affection, his wife having died some years previous. Here he gave his time to parental devotion and to the examination of revealed truths, to which he gave his hearty assent. But old age and decrepitude had now laid their inexorable grasp upon his frame, and, gradually bending beneath their weight, he died in Jackson, on the 5th of September, 1876.

While his latter days were embittered by the estrangement of his old friends and the assaults of political enemies, yet no sooner is he laid away in the grave than all political animosity is sunk beneath the wellings of veneration, and reflecting now only upon his great ability as a judge and his merits as a man,

> "His friends, estranged but yesterday, in sorrowing awe return
> To gather up his greatness into history's golden urn."

At a meeting of the members of the bar of Copiah County, at Hazlehurst, convened to pay a tribute to his memory, the com-

mittee appointed to draft an expression of their feelings, which was composed of his old associates and neighbors, in the preamble to their resolutions said :

" In his family he was remarkable for his kindness, indulgence, and generosity, and was the pattern of propriety. His deportment in society, at the bar and on the bench, was marked at all times with that graceful courtesy that distinguishes the gentleman of culture and refinement. He was a generous friend to the young practitioner, and extended to him that consideration which encouraged to studious application to the learned profession in which he had embarked, and to which the accomplished judge had devoted himself, through so many years of toil, with that distinguished success which has enrolled his name in the rank of the most learned jurists of his age ; and we may add, that the firmness, decision, and stern integrity of the lamented late Chief Justice, who disrobed himself of the ermine as he had put it on, pure and undefiled, are not less worthy of admiration and emulation than his profound knowledge of the law."

His moral heroism displayed itself in every sphere of his life, and seemed always equal to any emergency that might drop from the hand of fate. In the great crash attending the failure of the Brandon Bank he lost almost his entire fortune, consisting, it is said, of near a hundred thousand dollars, and was left laden with heavy and pressing debts, from which his friends advised him to seek refuge in bankruptcy ; but he repelled the idea, and resolved to pay his entire indebtedness, both principal and interest. This his industry and vigor in the management of his affairs, seconded by his clear-minded and devoted wife, enabled him finally to effect—a circumstance to which he often referred with pleasure and pride in the latter days of his life.

This heroism of his character was strikingly exemplified on his bed of death, when his accomplished youngest daughter, who had been accustomed to reading to him, repeated those beautiful words from Addison's Cato :

" 'Tis not in mortals to command success ;
But we'll do more, Sempronius : we'll deserve it."

"The tears," says she, "gathered and fell with the emotions that swayed through his being." And thus his last words and last thoughts were lost in the grand and the unutterable.

The venerable and distinguished Colonel Bailie Peyton says: "The last time I saw my cousin Ephraim was when we were together within the college walls. He was studious, talented, and advanced in learning beyond those of his years; full of order and system in whatever he did; and, as I recollect, his handwriting was like copperplate. But above all was he noted for his brave, candid, and honorable nature, as being in himself the mirror of truth; courteous to all, generous, chivalrous, peculiarly sensitive and high-wrought at a point of honor, yet in the calms of his strong nature, none were more tenderly considerate and sympathetic."

These traits, which so remarkably distinguished his youth, relaxed nothing of their grasp upon his nature as he advanced in years. If they were roughened and rendered more rugged by the rude clashings and asperities through which he wrought his after life and his eminence, they were also chastened by the growth of a well-balanced mutual influence and by the reins of a riper judgment. It was the same character acted upon by the sweets and acids of a busy life and tempered in the furnace of experience, the same blent bulk of qualities expanded and rounded by the breath and spirit of development. He united, to a wonderful extent, those extremes of humanity, a rigid firmness and a deep sympathy, yet where they met together there was no discoverable point of weakness. His character was a clear, well-defined arching over and blending of virtues that constitute the philanthropist and the stern judge; and he went down to his grave not only full of years but full of honors.

## COLLIN S. TARPLEY.

Collin S. Tarpley was born in the city of Petersburg, State of Virginia, in the year 1802. His father, having failed in business, determined to seek a reparation of his fortunes in the West, and before Collin had reached his tenth year the family removed to Nashville, Tennessee, where its circumstances were such that his mother, who was a lady of education, was compelled to aid in its support by teaching school. By this means she was enabled to send her son, who had been prepared chiefly under her tuition, to Cumberland University. But on the removal of the family soon afterwards to Giles County, the poverty of his parents was such as to preclude him from any further prosecution of his studies than that which he could accomplish at night, and during such recreations as the labors of the field would permit. During the winter of 1819, however, he was again enabled to attend school by walking a distance of five miles, carrying his blankets and provisions with him on each Monday morning, and remaining in the vicinity of the school during the week, studying at night by the light of torches, and sleeping upon the hard floor; yet under these severe circumstances his industry and assiduity enabled him to maintain a position at the head of his classes and win the first honors of the school.

On reaching the age of manhood, he taught school for a year or two, as a financial necessity, and then entered the law office of Governor A. V. Brown and James K. Polk, who were at that time partners. These gentlemen afforded him great aid, both in his studies and in pecuniary matters, which enabled him to establish himself in practice. He located his office in the town of Pulaski, where he resided until about the year 1831, and then removed to the town of Florence, in Alabama. Here he became associated with the Hon. John McKinley, afterwards one of the judges of the Supreme Court of the United States. His practice

was large, and he enjoyed every prospect of eminent success; but Mississippi was extending her inviting arms and presenting unusual fields for lucrative practice, and in 1836 Mr. Tarpley removed to this State and settled in Hinds County, where he formed a copartnership with Judge Taylor. Here he entered at once upon a large practice in the High Court of Errors and Appeals, in the Superior Court of Chancery, and in the Federal courts. It is said that in the spring of 1838 his firm instituted near a thousand suits, one half of which were brought in the Federal courts, and consequently involved an amount exceeding $500 each.

On the resignation of Chief Justice Sharkey, in 1851, Mr. Tarpley was appointed by Governor Whitfield to fill the vacancy on the bench of the High Court, which position he accepted; but in consequence of the right of the Governor to make the appointment being questioned, he resigned soon afterwards and resumed his practice at the bar.

As a lawyer, Judge Tarpley was eminent both for his profound learning and great success. His mind was vigorous and grasping; was searching, retentive, and logical, and his energy was active and indomitable. His oratory was generally plain and didactic, but forcible and impressive, and his arguments were weighty with learning and practical thought.

He was imbued with a deep sentiment of philanthropy and public-spiritedness, and his enterprise extended to every important interest and public concern. He delighted in projects for the advancement of the public weal and the elevation of society, and took an active interest in the progress of agriculture and in railroads. In his speech before the Shelby County, Tennessee, Agricultural Association, in 1859, he uttered a glowing panegyric upon the elevating character of agricultural pursuits, and made a strenuous appeal to Tennesseeans for the conversion of the Hermitage, the home of Andrew Jackson, then the property of the State, into an agricultural college. "Let the Hermitage, then," said he, "be turned into a great agricultural college, organized and sustained as a State institution, where the youth of Tennessee may not only learn to admire the military glory, but imitate the no less useful domestic virtues of the sage

whose spirit presides over and hallows its sacred precincts; where they may learn the most ancient and least understood of all the arts—that of tilling the soil upon scientific principles."

Judge Tarpley was the originator of the scheme for the New Orleans and Jackson Railroad, drafted and procured its charters, devoted his time and talents towards the organization of the company, and was at the time of his death one of its board of directors. He lived to see the project which he was the first to contemplate, and which was scouted as the dream of a visionary, grow into a great thoroughfare, and extend from New Orleans to the Ohio.

In politics Judge Tarpley was an ardent Democrat. He was a member of the Baltimore Convention of 1852, and was enthusiastic in support of the principles of his party. While he was devoted to the Union as it was made by our forefathers, he was far from counselling submission to wrong in order to preserve it. "Better," said he, "to shiver the Union into a thousand fragments, and trust to Providence, and the intelligence and patriotism of the people for the formation of a better one, than to become the slaves of the stronger section, and to feel ourselves to be inferiors when we have heretofore stood as equals. I counsel no such craven spirit of submission as this."

But, happily, Judge Tarpley did not live to see the ruin which was then pending over his country. He died in the spring of 1860, ere the dismal clouds had heaved in view. And if it be, as Lord Mansfield says, "that death never comes too soon to him who falls in defence of the liberties of his country," surely it comes not too soon to the patriot when it closes his eyes to the vision of their overthrow.

Judge Tarpley possessed a keen taste for literature. Some of his contributions to periodicals upon the subjects of agriculture and railroads were republished in pamphlet form and largely circulated; and in 1851 he wrote and published in pamphlet the life of Colonel Jefferson Davis, whom he at that time strenuously advocated for Governor of Mississippi.

He took a deep and active interest in the affairs of the Church, was a warm Methodist, and steadfast in his faith. His Christian and moral virtues were in full counterpoise with his intellectual

traits, and while the latter gave him eminence as a lawyer, the former shaped the character of the man. The following resolutions were adopted by the bar of the High Court on the occasion of his death :

"The members of the bar of the High Court of Errors and Appeals have received with profound regret the sad intelligence that another of their number has been taken away.

"Before reaching the period fixed by the Psalmist as the limits of human life, Collin S. Tarpley was cut down, in the full strength of his intellect and the vigor of mature manhood. For nearly a quarter of a century he was a member of this bar, enjoying the respect of all for the high order of his talents, his varied legal attainments, and his kindly courtesy towards his associates.

"Beginning life without the adventitious aids of fortune or family influence, Collin S. Tarpley, by his intellectual acquirements, persevering energy, and courteous manners, attained a prominent position in Mississippi as a lawyer, a politician, and a citizen ; and now that the grave has closed over him, his associates at the bar desire to pay the last tribute of respect to the memory of a deceased brother, who, during his whole career, bore himself towards them with the kindly courtesy of a Christian gentleman ; and, to that end, they

"*Resolved*, That in the decease of Collin S. Tarpley the State of Mississippi has lost one of her worthiest and most valuable citizens, and this bar one of its most eminent and able members.

"*Resolved further*, That the members of the High Court of Errors and Appeals be requested to accompany the members of the bar to the funeral of their deceased brother as a mark of respect to his memory.

"*Further resolved*, That they sympathize with the family of the deceased in their great affliction, and tender to them heartfelt condolence of friends who know and feel their loss.

"*Further resolved*, That these proceedings be presented to the High Court of Errors and Appeals, in open court, with a request that they be spread upon the minutes, and that they be published in the city papers, and a copy be furnished the family of the deceased."

# CHAPTER XI.

## THE BAR—EMINENT LAWYERS—1832–1880.

AMOS R. JOHNSTON—JAMES T. HARRISON—JOHN B. SALE—WILLIAM F. DOWD.

## AMOS R. JOHNSTON.

One of the noblest commentaries upon American institutions is the facility which they afford to genius and rectitude for rending the clouds of obscurity, for bursting from the most adamantine gyves of condition into the glare of honor and the full round orb of fame. Fate has here no iron bed upon which its victims, like those of Procrustes, are bound and fitted by the fiat of unalterable decree. Here genius, once fledged in the nest of morality, leaps forth like a young eagle from its eyrie, and spreading the wings of resolution, soars away to the heights of its ambition and capability. Here honor demands no glittering armorial, wealth no splendid heirlooms of inheritance, and eminence no pride of pomp or lictorial badge. Here fame requires no arbitrary circumstances, depends upon no golden opportunities, and exacts no impersonal qualifications; but only that he who would reach its realms shall be guided by the beacons which it has established along the *sacra via* of its glory.

Many of our most distinguished citizens began life under the most unfavorable circumstances, and it is with the superlative pride of patriotism that we point to our Franklins, our Clays, and our Stephenses as the peculiar and legitimate fruit of our state of society, which none but the tree of liberty could have blossomed and matured in spite of the blasts that beat upon the opening buds, and of whose fame the compass of space,

like the terminal god of the Romans, has no arms to mark the bounding *thule*.

There were also many eminent gentlemen of the Mississippi bar who, as we have seen, could trace their beginning to a period when they stepped upon the stage of life the apprenticed architects of their own fortune, and with no tool but their talents and no whet-rock but their integrity, constructed the ladder of their own eminence. Among these was the subject of this sketch.

Amos R. Johnston was born in the State of Tennessee. His scholastic advantages were scanty, and his early education was obtained principally in the office of a country newspaper; but so vivid was his aptitude, and so strenuous were his diligence and application, that he was soon enabled to ascend the tripod; and having established a paper in a small village in Henry County, in connection with the afterwards famous General Zollicoffer as a partner, he became at an early age a political writer of repute in the Western District.

About the year 1830, Mr. Johnston emigrated to Mississippi and took up his residence in the town of Clinton, where he resumed his editorial pursuit, and at once achieved a prominent position. Clinton was at that time the centre of wealth and influence, and from this point he effectively promulgated the staid and conservative doctrines which characterized through life his public conduct and political creed. Though originally a friend and supporter of General Jackson, he soon abandoned the Democratic party and became an energetic, determined, and uncompromising leader of the old Whig party.

In 1836 he represented Hinds County in the Legislature, in which he colleagued with Messrs. Prentiss, Guion, Tompkins, and other leaders of that party, and was one of the most efficient and influential advocates of its measures.

He served but one term in the Legislature, and about this time removed to Jackson, where he continued his editorial labors until the year 1839, when he was elected clerk of the Circuit Court of Hinds County, and from that time his connection with the press ceased. He then established his residence at Raymond, the seat of justice of the county, where he resided

until the year 1865, when he again removed to Jackson, and there abided until the time of his death. Mr. Johnston served two terms as clerk of the Circuit Court, and was in 1845 elected Probate Judge of Hinds County, and held that office for three terms. It was during the period of his clerkship that he turned his attention to the study of law, and the legal proficiency which his genius and assiduity acquired during that time, burdened as it was with his official duties, was eminently indicated by the efficiency and popularity of his career as Probate Judge of the county, in which office his conscientious integrity and scrupulous exactness in the administration of matters pertaining to that court gave him a reputation for uprightness which was enlarged in every sphere of his life, and which grew with his advancing years.

In 1851 Judge Johnston was elected, in the heated canvass of that period, a member of the convention convened to determine the course of Mississippi in regard to the Compromise measures of 1850, and in that body strenuously advocated acquiescence and the preservation of the Union, which he deemed paramount to every other consideration. He was opposed to the doctrine of secession, and seemed with prophetic eye to foresee in that movement a terrible civil war, the final overthrow of the South, and the train of woes that would inevitably follow ; and throughout the fierce preparation and fiery ordeal his voice, if not heeded, was respected as that of one whose love for his State and section, and whose fidelity to what he conceived to be the true interest of his people, were wholly beyond the reach of doubt and above all question.

Judge Johnston was too ardently devoted to his profession to have much relish for the scramble for office and the fickle honors of political preferment. At one time he was solicited by his party to become a candidate for Congress, and at another he was its choice for Governor of the State, but in each instance he declined the nomination and sought in his law office the exercise and development of those eminent traits of his character which recoiled from the cunning schemes and wily shifts of politics. Tacitus says of Galba, "He seemed too great for a private man, while he was one," and it may be said of Mr.

Johnston that as a private man he seemed too good for a public one. Yet he was always ready to serve his people on any occasion of great moment, and his consistency and fidelity never swerved or varied throughout the ever-changing panorama of events which spread themselves upon the two last decades of his life. His well-known sentiments in regard to the Union caused him to be defeated for the first and only time, in his candidacy for the Convention of 1861, which adopted the ordinance of secession ; but he was summoned to that of 1865, which enacted its repeal. After this Judge Johnston allied himself with the Democratic party, exerted his utmost powers, and invoked his great ability and extended influence to defeat the vengeful policy of the party in possession of the Federal Government, and in 1875 was elected to the State Senate from the counties of Hinds and Rankin, amid the throes of the reaction which redeemed the State from the clutches of radicalism and the rule of adventurers.

But it was as a lawyer that the resplendent qualities of his mind, and as a private citizen that those of his heart, shone with the greatest lustre. And so full-orbed, luminous, and poised were these in their respective orbits that it is difficult to say which emitted the purest light or flashed the most calescent flame ; or which shed the brightest glow upon his character, or gave the most brilliancy to his reputation. His knowledge of the law in all its branches was thorough, comprehensive, and profound. He was a close, curious, attentive, and apt student ; and his knowledge was rooted in the very depths of the science, while the quality and bent of his mind were peculiarly adapted for comprehending the minutest features as well as the grandest outlines of the profession. His rapid and impulsive perception, his accurate discernment, and intuitive judgment, readily embraced and digested the character of every question of law or fact. His patient, painstaking, and complete preparation of his cases anticipated every turn and shape which they might assume, and he was never surprised or driven to a disadvantageous position. His studious habits placed him apace with the progress of jurisprudence ; and he was familiar with the reported decisions, which his skill in parity of reason and his

powers of analogy and comparison enabled him to invoke on all occasions, and apply, to the discomfiture of his adversary, in a manner as effectual as novel and unexpected.

His genius was of a high order, and he possessed to an almost perfect degree that exact measure and full, round composition of qualities required to form the character of a great lawyer. Minute in investigation, methodical in arrangement, synthetical in his logic, he advanced in his arguments with the sure-footed pace of a master logician. Nor was his oratory of an ordinary kind; but while devoid of any effort towards ornation or display, his manner of speaking was forcible, effective, and engaging, and at times, when occasion required, was elevated to eloquence and sublimity.

While stern and unyielding in the conduct of his cases, he rarely swerved from the most placid deportment, and maintained on all occasions a pure and polished system of professional ethics, which cemented the most pleasant relations between himself and both the bench and the other members of the bar. His manners were characterized by a simple dignity, an engaging yet unassuming suavity, a winning courtesy, and a sympathy which held in its embrace all the sufferings and sorrows of humanity. His liberality was catholic and large-handed, and whether it was extended at the bidding of patriotism or the calls of private distress, it knew no discrimination but the worthiness of its objects, and no bounds but his ability.

His sympathetic nature rendered him peculiarly prone to a fondness for defending those unfortunate individuals who had fallen under the vindicatory vengeance of the law; and his feelings and faculties once engaged in behalf of the accused, he clung to the defence with an energy and tenacity which gained the admiration of courts and juries, wrenched sympathy from the heart of prejudice, and which rarely failed to stay the arm of the fiercest prosecution.

One of the most noted instances of this character was in the case of the State of Mississippi *vs.* Boles. The defendant was indicted at the October term, 1846, of the Circuit Court of Warren County, for the murder of Donnaho, and at the May term, 1847, was tried, convicted, and sentenced to be hung; but

on a writ of error, taken by Judge Johnston to the High Court, a new trial was obtained. At the May term, 1848, of the Warren County Circuit Court the *venue* was changed to Hinds County, and at the May term, 1849, of the Circuit Court of that county the prisoner was again found guilty and sentenced to death; but upon a writ of error to the High Court a new trial was again granted, and mainly for the following reason: A juror whose name had been regularly reached upon the list of the special *venire*, having stated to the court that his wife was sick, was excused from serving, notwithstanding the protest of both the counsel for the defence and the District-Attorney.

At the May term, 1852, of the Circuit Court of Hinds County, Boles was tried the third time, and was again convicted and sentenced. During this trial the following circumstance occurred: On the list of those who had been summoned on the special *venire* was the name of John W. Jones, and when this name was called, James W. Jones came forward and established himself as a juror, upon which Judge Johnston stated to the court that the name of James W. Jones was not upon the list furnished to his client, objected to his being impanelled, demanded the production of John W. Jones, and declined to proceed with the call without him. This objection the court overruled; and upon a third writ of error the High Court said that the prisoner was surely entitled to be tried by a jury selected from the persons summoned under the special *venire*, and according to the list furnished him, provided that it contained a sufficient number who were competent; but as the panel was completed in this case before the *venire* was exhausted, the objection was not well taken. But in consequence of the admission as evidence on this trial of the affidavit of the prisoner for the change of *venue*, and of the former convictions, the High Court, in 1854, reversed the judgment and ordered a fourth trial, at which the prisoner was acquitted.

It is said that during the course of this trial, which pended through more than eight years, the prisoner, who was incarcerated in an upper story, dropped a peach-seed beneath the window of his cell, in the early period of his imprisonment, which germinated and grew into a large tree, from whose branches he



James T. Hamilton

plucked and ate fruit before his enlargement; and that having entered into confinement a hale, hearty, and robust man, he emerged from his long durance old, gray-headed, and decrepit.

But it is not upon a few leading cases alone that the evidence of the eminent qualities of Judge Johnston rest. He was enterprising and determined in all his undertakings, open and avowed in creed and action, and detested even the appearance of equivocation. His mental character was fashioned in the mould of law, his moral in the cast of rectitude. No disorders of society or state of public moral declension could shake his firmness or lower the standard of his virtue, and throughout the vicissitudes which upheaved the social order of the country he was the same patriot, the same upright citizen, the same pure man, and maintained to his end an integrity of conduct and a calmness of spirit which reproduced and recalled the examples of the patriots of ancient days; and at his death, which occurred in 1879, it was a universal sentiment that a great and good man had fallen in Mississippi.

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## JAMES T. HARRISON.

Among the many great lawyers who have adorned the bar of Mississippi there were few, perhaps, whose characters presented such a full, round orb of eminent qualities, and whose mental traits it would, in a metaphysical view, be more difficult to abstract and define, than those which characterized the subject of this memoir; the attempted portraiture of which must result disastrously alike to the skill of the artist and the power of his colors.

James Thomas Harrison was born near the village of Pendleton, in the State of South Carolina, on the 30th of November, 1811. His father, Thomas Harrison, was a distinguished lawyer and a descendant of a signer of the Declaration of Independence. He was also captain of a battery in the war of 1812, and was afterwards Controller-General of the State.

The mother of James T. Harrison was a lady remarkable for

her many graces and accomplishments. She was the daughter of General John Bayliss Earle, who was a leading member of the famous Nullifying Convention, and one of the most highly-respected and popular men in his State.

The residence of Thomas Harrison, Lowther Hall, was situated on the little river Tugaloo, and opposite to Fort Hill, the home of John C. Calhoun; and it was in the glare of such surroundings that the subject of this sketch imbibed those beams of greatness which kindled the fires of his genius and afterwards blazed along his own pathway. The inspirations of such a nursery, and the impressions which he received from the master mind of his distinguished neighbor, blended with his natural endowments in the formations of a mind which afterwards expanded into an illustrative type of true greatness. He was a close and devoted student, manifested at an early age an eager and inquiring mind, and his career was one of those rare instances in which youthful precocity realizes the hopes of parental ambition and the promises of early years. On reaching the age of eighteen he graduated with distinction at the University of South Carolina, and then studied law under the celebrated James L. Pettigru, of Charleston, where he was admitted to the bar. The teachings and examples of his distinguished preceptor no doubt left plastic impressions upon the already highly-wrought mould of his mind, and stamped his career with the forebodings of future success.

Having now arrived at the age of majority, he contracted the raging desire among young lawyers of that period to emigrate westward, and lured by the professional attractions of Mississippi, which were then being spread upon the gaudiest wings of report, he determined to make his future home amid her blooming prairies and tangled wilds—a step which, he said, he soon regretted, and that some remark of his father predicting, when he gave his consent to the move, that he would soon tire of the hardships of his new home and return to the old, was mainly the cause of his remaining.

Arriving in Mississippi in 1834, he established himself at Macon, the county seat of Noxubee County, and there began his first struggles for professional fame. Possessed of ample

means supplied by his father, who was in affluent circumstances, he was enabled to direct his application with a view to improvement rather than to the speedy acquisition of gain ; but it was not long before his talents were recognized, and he soon found himself in the midst of a remunerative practice.

At Macon Mr. Harrison formed a copartnership with the late Judge Ruff, but he remained at that place only two years, after which, induced by the prospects of a more extended field, he removed to Columbus, where he made his permanent abode and achieved his great success. Here he was married, in 1840, to Miss Regina Blewett, the eldest daughter of Major Thomas Blewett, who was one of the wealthiest planters in Mississippi, by whose assistance, together with his own ample patrimony and acquired means, he was now in a condition to pursue his profession simply for the love which he bore it, and this love, setting apart his affection for his family, was the ruling passion of his life. He loved the law as the grandest edifice ever erected by the mind of mortal man, as the great receptacle into which has flowed the wisdom of the ages. He recognized the truth of the saying of Sir Henry Finch, that "the sparks of all the sciences in the world are raked up in the ashes of the law," and he adopted the maxim of Lord Kenyon, that "*melius est petere fontes quam sectari rivos.*"

He had early consecrated all his energies, his talents, and his ambition to his profession, and he clung to it through life with the fondness and fidelity of a devotee, and with an indefatigable determination to dive to its depths and ride upon its surface, to be among its heroes, "*aut Cæsar, aut nullus.*"

But while he conceived, as Mr. Locke said of *mankind* and *man*, that the proper study of a lawyer was law, yet there was one book which he considered as an indispensable adjunct, and from which he often drew the most cogent streams of conviction. When the venerable Macklin entered his son as a student of law at the Temple, he enjoined upon him the Bible as the first book he must study. "The Bible, Mr. Macklin, for a lawyer?" asked the learned gownsman. "Yes, sir," replied Macklin, "the properest and most scientific book for an honest lawyer, as there you will find the foundation of all law and morality."

Mr. Harrison always kept a Bible and concordance within reach of his office chair, and its precepts, no doubt, smoothed the rough edges of his legal character, and gave ascendency to that warmth of charity and habitual amiability which so highly adorned his life.

The genius of Mr. Harrison was adaptable to universal application. It is said that Sir Isaac Newton attributed the great excellence of his mental qualities not to any superior endowment, but to an acquired capacity for close attention and patient thinking. But Mr. Harrison inherited talents of the highest order. He possessed all the qualities and acquirements which constitute a brilliant and well-regulated mind, and had it been guided in that direction, would, no doubt, have roamed as luminously amid the constellations and azure fields of the heavens as it did through the lurid cope of equity and the labyrinthian concaves of the common law.

He had cultivated a habit of minute observation, of steady and continuous attention, and contemplated the law in all its elements and relations. No fact or circumstance, on the trial of a cause, escaped the glare of his perception, no testimony the exact measure of his estimation, no evidence the poised scales of his precision, no law the facility of his application, no artifice of an opponent the depths of his penetration, and no subtlety the winnowing process of his analysis.

His reasoning was logical and profound, and the succession of his ideas was regulated and controlled by a cultivated and accurate synthesis. In argument he was close, alert, and comprehensive; nor did he permit the train of his thoughts to be broken by frivolous and transient diversions; but with his own view fixed solely and directly upon the goal of conviction, he blinded the minds of his hearers with no collateral display.

His ready powers of association and comparison afforded him great facility for analogy and parity of reason. He viewed facts according to their just and true relations, and connected them in his mind by a chain of kindred features and dependencies. Hence his memory was active and faithful, and always at his command for the purveyance of his boundless resources.

He possessed a highly-wrought and vivid imagination, which

at times leaped from the copious hive of sentiment, gathered sweets from every flower of imagery, and feasted upon the very ambrosia of Æsthetics. Yet he rarely indulged in hyperbolism, but restricted his metaphors to objects and features which harmonized with truth. His fancy attached itself more to the elucidation of obscure intricacies and to the weaving of technical subtleties than to the shallowness of overwrought imagery.

As a special pleader Mr. Harrison had no superior, if an equal, in the annals of the Mississippi bar, and had he lived in the days of Mr. Stephens and Mr. Chitty, he would, doubtlessly, have taken rank with the most skilful pleaders in the courts of Westminster Hall. Illustrating this feature of his professional character, the facetious author of "Flush Times of Alabama and Mississippi," referring to him as "Jim T.," gives an amusing description of his early standing among his legal associates. Speaking of the older members of the bar of that period, Mr. Baldwin says:

"The aforesaid leaders carried it with a high hand over us lawyerlings. What they couldn't get by asking the court, they got by sneering and browbeating. They could sneer like Malgroucher, scold like Madam Caudle, and hector like Bully Ajax. We had a goodly youth from the Republic of South Carolina, Jim T. by name. The elders had tried his mettle. He wouldn't fag for them, but stood up to them like a man. Jim was equal to any of them in law, knowledge, and talent, and superior in application and self-confidence, if that last *could* be justly said of mere humanity. He rode over *us* rough-shod, but we forgave him for it, in consideration of his worrying the elders and standing up to the rack. He was the best lawyer of his age I had ever seen. He had accomplished himself in the elegant science of special pleading, had learned all the arts of confusing a case by all manner of pleas and motions, and took as much interest in enveloping a plain suit in all the cobwebs of technical defence as Vidocq ever took in laying snares for a rogue. He would 'entangle justice in such a web of law' that the blind hussey could have never found her way out again, if Theseus had been there to give her the clew. His thought by day and his meditation by night was special pleas. He loved

a demurrer as Dominie Dobiensis loved a pun—with a solemn affection. He could draw a volume of pleas a night, each one so nearly presenting a regular defence that there was scarcely any telling whether it hit or not. If we replied, ten to one he demurred to the replication, and would assign fifteen special causes of demurrer in as many minutes. If we took issue we run an imminent risk of either being caught upon the facts, or of having the judgment set aside as rendered on immaterial issue.

"Jim T. was great on variances too. If the note was not described properly in the declaration, we were sure to catch it before the jury; and if any point could be made on the proof, he was sure to make it. How we trembled when he began to read the note to the jury! and how ominous seemed the words 'I object' of a most cruel and untimely end about being put to our case.

"How many cases where, on a full presentment of the legal merits of them, there was no pretence of defence, he gained, it is impossible to tell. But if the ghosts of the murdered victims could now arise, Macbeth would have an easy time of it compared with Jim T. How we admired, envied, feared, and hated him! With what a bold, self-relying air he took his points! With what sarcastic emphasis he replied to our defences and half defences! We thought that he knew all the law there was, and when in a short time he caught the old leaders up, we thought, if we couldn't be George Washington, how we should like to be Jim T.!

"He has risen since that time to merited distinction as a ripe and finished lawyer; yet 'in the noon of his fame' he never so tasted the luxury of power, never so knew the bliss of envied and unapproached pre-eminence, as when, in the old log court-houses, he was throwing the boys right and left as fast as they came to him, by pleas dilatory, sham, and meritorious; demurrers, motions, and variances. So infallible was his skill in these infernal arts that it was almost a tempting of Providence not to employ him."

To these indications may be superadded an incident which occurred in his old age, and within the observation of the author:

Mr. Harrison was engaged in the defence of a cause before the

Circuit Court of Colfax, now Clay County, in which there was a heavy claim for damages for "enticing away" laborers who were under contract, and on the introduction of the case he claimed its dismissal for lack of merit and cause of action, contending that, by virtue of the thirteenth and fourteenth amendments, the common-law relation of master and servant did not exist in this country. There were apparently no American precedents at hand, and seemingly a fatal halt was caused in the proceedings, during which the counsel for the plaintiff drew forth advance sheets of the Crispins' case, which is contained, I believe, in the 109th Massachusetts Reports, then in press, and which he had obtained a few days before from the reporter of that State.

The court, without objection on the part of Mr. Harrison, permitted the loose sheets to be read, and it transpired that in that case the Supreme Court of Massachusetts, in answer to the very argument advanced by Mr. Harrison, held that the right of action in such cases depended not upon any positive law, but was a right rising out of the contract, and was applicable to all classes and conditions of men.

From this time the rulings were all against him, and he was brought down to the jury with every circumstance apparently stamped with premonitions of defeat. But the plaintiff had no sooner begun the introduction of his testimony than Mr. Harrison seized upon a technical variance between the declaration and the proof, which he managed so adroitly as to cut off the plaintiff from the main body of his evidence, and reduced all possible damages to a mere nominal amount. Upon which the counsel for the plaintiff, on realizing the situation, observed that Mr. Harrison, after having been dislodged from his perch in the topmost branches, and shaken from bough to bough, and from twig to twig, when brought to the roots had sprung upon a stump and barked "variance," at which Mr. Harrison, now resting in the placidity of a narrow triumph, joined in a hearty laugh; but had he been laboring under the irritation of defeat, he would, most likely, have hurled back one of those sarcastic and scathing retorts of which, when occasion required, he possessed such perfect mastery.

Over all these attributes was the exercise of a sound and correct judgment, which, nurtured in the lap of learning and fed from the copious stores garnered by tributary qualities, expanded to the vast outlines of his comprehension, seized upon every feature of entity, laid hold upon every object in nature, and was equally efficient in the formation of opinion and in the guidance of action. He possessed a sanguine temperament and strong emotional energy, which in his latter days gave him at times the appearance of being captious, but his well-balanced judgment and kindness of heart dispelled that austerity which is generally a concomitant of bodily infirmity and mental senescence, and he was one of the comparatively few of mortals whose capacity for intellectual enjoyment did not slacken at the touch of age. His "*vigenti annorum lucubrationes*" extended to the end of his life.

But while the aspirations of his genius and the cravings of his ambition seemed to find no limits within the scope of his profession, he entertained no desire for official preferment, and had no taste for public life. Twice he was offered a seat upon the supreme bench of the State, and as often declined it.

He was chosen, without his knowledge, by the Mississippi Convention of 1861, a delegate to the Convention of the Southern States at Montgomery, and there advocated the adoption of the old flag in a speech said to have been of remarkable force and eloquence. He was also in the Confederate Congress during the entire period of its existence, and was considered one of the most able and efficient members of that distinguished body. But his ardent temperament and gallant disposition would have hurried him into the thickest of the fiery drama had it not been for a near-sightedness which rendered him totally unfit for military service.

On the reorganization of Mississippi under the Johnson administration, he was elected by a large popular majority to a seat in the Federal House of Representatives, and repaired, with his credentials, to Washington; but the entire Mississippi delegation having been refused admittance, he returned to his practice, and confined his interest in public affairs to the redemption of his State and people from the Moloch grasp of Federal oppression.

But about this time he received a compliment which he highly appreciated, and which he considered really as one of the proudest events of his life. The following communication will set forth its nature :

"JACKSON, July 13, 1865.

"HON. JAMES T. HARRISON.

"DEAR SIR : The undersigned, believing that it is proper that the bar of Mississippi should be represented on the occasion of the trial of President Davis, have selected you as such representative.

"Apart from the transcendent importance of the case, as affecting the most vital principles of constitutional freedom, it is due to the eminent character of President Davis that counsel from his own State should offer their services. More especially so since one of the most eminent lawyers of America, a resident of a Northern State, has already asked the privilege to aid in the defence. We earnestly appeal to you to gratify the wishes of your professional brethren.

"Will you please respond at your earliest convenience, as it is uncertain what time may be appointed for the trial ?

"We may add that all expenses incurred by you will be defrayed. We could not ask a higher sacrifice of you than the loss of time you would be compelled to submit to by acceding to our request.

"We could convey no higher expression of our confidence in your professional ability than is implied in your selection for this most delicate and important trust.

"The civilized world regards the trial with more interest than any one which has occurred within the annals of our race. With what feelings should Mississippi contemplate the scene in which her most illustrious citizen is arraigned for his life for having been placed in the position he lately occupied as the representative of her most sacred rights ?

"We have the honor to be,

"Very truly, your obedient servants,

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|---|---|
| "C. E. HOOKER, | A. R. JOHNSTON, |
| "F. ANDERSON, | A. P. HILL, |
| "T. J. WHARTON, | E. S. FISHER, |

"and others."

Mr. Harrison promptly accepted the trust, and said that if the trial should occur he would appear in defence, but that he did not believe it would ever take place ; that, with Chief Justice Chase presiding, there would be no chance of conviction, and he did not believe the United States Government would risk the stakes.

These predictions, engendered by his far-seeing judgment and legal acumen, were fully verified, and the Government seemed to labor as hard to justify an escape from the issue as it had bustled to impress the resoluteness of its purpose; while Mr. Harrison was relieved from a defence in comparison with which, in view of the magnitude of its bearings, those of Warren Hastings and Queen Caroline would have dwindled into utter insignificance, as, indeed, would all others, scarcely excepting the frantic farces of the revolutionary tribunals which brought the heads of Charles I. and Louis XVI. to the block.

But, rivalling the jewels of his intellectual crown, there were the shining qualities which decked the almost unsullied robes of his purity. While his life was one continual path of duty, it was the clear, cool, breezy walk of rectitude, arched over with the canopy of genius, and garlanded with the flowers of charity and benevolence. His professional ethics were pure, elevating, and exemplary, and while he was vehement and pertinacious in advancing and maintaining his positions, he was gentle and yielding to the rulings of the court, dignified and urbane towards his opponents at the bar, tender and conciliatory in the examination of honest witnesses, but peculiarly severe towards the prevaricating, evading, and contumacious. This last well-known characteristic enabled him, no doubt, to extract from fear many a truth in the promotion of justice which would otherwise have remained locked in the bosom of dishonesty. While he delighted to entrap them in technicalities, he was generous to the younger members of the bar, and always ready to give them aid and counsel. But he had no mercy on negligence and inexcusable ignorance. He thought that they should thoroughly qualify themselves before entering the bar, and was severe on those who entered through his examination. The author experienced his inquisitiveness in that respect.

There were but few, if any, who dispensed more professional charity than Mr. Harrison. If he charged a poor man, it was but a nominal fee, and he always advised such to avoid litigation if possible. He had early in his professional life adopted two rules, to which he continued to adhere—not to charge a widow, nor to prosecute a man for his life. He said that during

his early practice he once prosecuted a capital charge upon purely circumstantial evidence, and after conviction labored as hard to rescue the unfortunate man as he had done to convict him on the trial; which he succeeded in doing, but that the near approach of the execution gave him such a shock that he never afterwards had any faith in circumstantial evidence, and resolved never again to engage in a prosecution involving life.

Among the many exhibitions of his genius he cherished a remarkable fondness for the science of geology, or rather for its objects, for his devotion to the study of law would not permit such an exacting rival; but he was fond of geologizing, and his cabinet of collections, which he arrayed in his law office, and to which he took pride in directing the attention of his visitors, was truly novel and interesting, and perhaps the most complete group of specimens possessed by any individual in the State.

It was on one of these excursions, not long after the war, among the rocks of Noxubee County, that he received a wound from the fall of a large stone, which necessitated the amputation of a large portion of his right foot, a circumstance which caused him great suffering during the remainder of his life.

He died at his residence in Columbus on the 22d of May, 1879. And here prudence would dictate that the curtain should fall upon this feeble narrative; but I must subjoin that, in addition to all these more public qualities of head and heart, Mr. Harrison maintained the most affectionate domestic relations. He was a fond husband, a doting father, and a devoted friend; and while the friendship he inspired needed but the mesmeric contact with his virtues to assume the growth of love, the golden chain was linked with the jewels of domestic felicity. To say that he was dear to his family and his friends would be to arrogate an unnecessary and gratuitous act of judgment, and to say how dear is not perhaps in the power of speech or thought.

For such a character to have been free from every fault and failing of humanity would not have been human. Yet so few were his weaknesses that they weighed but little in the scale of his greatness. His glory gathered in his dawn, blazed with splendor in the meridian of his life, and gilded the horizon of his declining years. And while he has disappeared behind the

sunset and the night, his fame will return with the morning, and ascend the current of the stream of time, until it is gathered, with all the bright things of earth, into the realms of eternal light, and receive its plaudits from the everlasting shores.

Numerous and eloquent eulogistic speeches were made on the death of Mr. Harrison by his brother members of the bar, while the press of the State teemed with tributes to his memory. The following resolutions were adopted by the bar of Columbus :

" The members of the Lowndes County bar, desirous of giving public expression to their feelings, and of the sense they entertain of the loss which the bar has sustained by the death of its oldest and most distinguished member, who for more than half a century has illustrated the virtues of the profession, adorned it by the exhibition of rare and eminent talents, and left to his survivors an example of spotless purity and integrity of life ; and also to manifest the affectionate esteem in which they hold the memory of their venerated departed brother, as a citizen eminent for all the attributes that adorn citizenship, and as a man endeared to their affections, as well by his private as public life ; by social qualities of heart, as well as by the vigor of his intellect, do adopt the following resolutions :

" 1. *Resolved*, That the members of the bar heard with deep and painful regret of the death of the Hon. James T. Harrison, and that we sincerely condole with the members of his family over the calamity which has befallen them, and the great loss sustained by the community.

" 2. *Resolved*, That, as a testimony of respect for the memory of the deceased, the judge's bench be draped in mourning during the remainder of the term.

" 3. *Resolved*, That, as a further token of respect, your Honor be requested to have the proceedings of the bar spread upon the minutes of the court, and that they be published in the city papers, and that the secretary furnish a copy to the family of the deceased."

I will close this sketch with the following extracts from some of the eloquent addresses delivered on the occasion of Mr. Harrison's death by the gentlemen of the bar, and which I have selected only by virtue of a difficult discrimination in favor of literary excellence and metaphysical merit.



Jno. B. Sato

# JOHN B. SALE.

If an uncommon strength of judgment and a justness of thought, which measure events by the rules of prudence, weigh every fact and phenomenon in the scale of an attentive observation, and rescue truth from the shackles of sophistry, may be accepted as an interpretation of genius, I have no hesitancy in ascribing that quality to the subject of this sketch, while I must allot to him the possession of an overruling virtuous sentiment which, like that of Hercules, decided the course and guided every motive of his life.

Xenophon, in his elegant Memorabilia of Socrates, relates a beautiful allegory describing the choice of Hercules between the superficial allurements of sensuality and the pure charms of virtue. The youthful hero, having arrived at the age of discretion, seeks the stillness of solitude for the purpose of reflecting and deciding upon his course of life ; and whilst in a state of perplexity as to whether he should enter upon life by the way of virtue or that of vice, he is approached and accosted by two women of remarkable appearance and stature. The countenance of one of these ladies glowed with benevolence and the modest smile of amiability. Her manners were dignified and gentle ; every gesture betokened the highest culture of decency and gentility. She wore no ornaments. Her native charms needed no artificiality to add to their serene splendor. She was adorned with neatness and elegance, and all her garments were of the purest white.

The other was not without beauty ; but, notwithstanding her rouged cheeks and carmined lips, her countenance had the appearance of being sallowed and bloated from luxurious excesses, and while she affected the most engaging manners, her demeanor was evidently studied and constrained, and every artifice was resorted to to remedy her natural defects. Her fingers and ears and breast glittered with sparkling ornaments. She was ex-

ceedingly bold, and the blush of modesty was altogether a stranger to her cheeks. Her dress was of the most gorgeous colors, and she was ever on the alert to detect the glance of admiration ; indeed, she would often stop to admire her own shadow. With characteristic pertness, she hastened in advance of the quiet, majestic step of her companion, and addressing Hercules with a bland but affected smile, announced to him that she was aware of the character of his meditations, and if he would accept the offerings of her friendship, she would conduct him along the most flowery paths of happiness and ease, where every delight should court his enjoyment, and not a thorn of pain or thistle of sorrow should ever pierce his feet. Free from the harsh and annoying concerns of life, the pleasures of luxury should be his only employment.

Upon this flattering and seductive announcement, Hercules demanded her name. "My friends," said she, "call me Happiness, but my enemies brand me with the nickname of Sensuality."

But the other lady had by this time arrived, and accosting Hercules, said that she too had come to offer the consolation of her friendship in the matter about which he seemed to be disturbed. That she was not a stranger to his eminent parentage, and had remarked the goodness and amiability of his disposition from his early childhood, and from which she entertained the most lively hopes that if he would follow her lead he would achieve glory for himself and be an honor to his chaperon. But that she did not intend to allure him with specious promises of pleasure, but would represent things as they existed in reality, and disclose to him the will of Heaven concerning them. "Know, then, young man," said she, "that the all-wise rulers of the universe have decreed that nothing great, nothing excellent can be obtained without care and labor ; that no good, no happiness, can be attained on any other terms. If, therefore, you would secure the favor of the gods, adore them. If you desire the love of your friends, be worthy of it. If you wish to be honored by your fellow-citizens, serve them. If you wish the fruits of the earth, cultivate it. Thus alone, O Hercules, mayest thou attain that felicity with which I am empowered to

reward those who yield to my direction, and who not only enjoy the richest blessings of earth, but when the fatal hour arrives, my votaries sink not like others into inglorious oblivion, but live forever in the favor of the gods and the grateful remembrance of mankind."

Let us now trace the application of this beautiful allegory to the subject of our sketch. John Burruss Sale was born in Amherst County, Virginia, on the 7th of June, 1818. He was the son of an eminent divine, Rev. Alexander Sale, and of Sarah Burruss Sale.

While he was a boy his father moved to Lawrence County, in the State of Alabama, and there placed him in the college at Lagrange, where he was educated under the supervision of the now venerable Bishop Paine, who was then the president of that institution, and whose voice may have been to young Sale what that of the *lady in white* was to Hercules. And as the life of Hercules evinced the wisdom of a choice which enabled him under the sternest decrees of fate to glorify the teachings of virtue, so that of the subject of this sketch verified the power of those hallowed admonitions which he received from his pious father and sanctified preceptor.

On the completion of his collegiate course Mr. Sale read law under Judge Ormand, of Alabama, and was admitted to the bar of that State in 1837, at Moulton, when he was but nineteen years of age, and two years later was chosen judge of the Probate Court. His morality and close application, together with the eminent qualities of his mind, enabled him very soon to achieve the distinction of a young lawyer of much promise, and finally conducted him to the position of eminence.

In 1845 he removed to Aberdeen, Mississippi, where, two years afterwards, he formed a copartnership with John Goodwin, Esq. This firm continued until 1854, when Colonel James Phelan, afterwards Senator from Mississippi in the Congress of the Confederate States, was admitted as a member, and on the death of Mr. Goodwin, in 1857, Messrs. Sale & Phelan continued their copartnership until the outbreak of the civil war.

In 1861 Judge Sale organized a company of volunteers, which was assigned to the 27th Mississippi Regiment. On the

reorganization of this regiment he was elected major, and was soon made lieutenant-colonel, and assigned to duty as judge-advocate of the Army of Tennessee.

He remained in this position about six months, was then promoted to colonel, and ordered to report to General Bragg, at Richmond, as chief of staff, and remained in this position until the close of the war. In this capacity the services of Colonel Sale were so meritorious and efficient as to elicit expressions of grateful recognition from his commander, and on hearing of his death General Bragg wrote: "Colonel Sale was to me not only a true friend, but a wise counsellor and an unwavering support, upon which I relied with confidence in times of great trial."

On his return home in 1865 Colonel Sale renewed his copartnership with Colonel Phelan, and the firm was soon after joined by Colonel William F. Dowd, and became one of the most noted in the State. On the removal of Colonel Phelan to Memphis, about a year later, the firm of Sale & Dowd continued until 1875, when it was dissolved by mutual consent, and Colonel Sale then admitted Mr. E. H. Bristow to a share in his practice. This copartnership continued until the death of Colonel Sale, which occurred on January 24th, 1876, from a spinal affection induced by too prolonged and intense mental application.

He was first married to Miss Susan Turner Sykes, daughter of Dr. William A. and Rebecca Sykes, formerly of Decatur, Alabama, and afterwards of Aberdeen, Mississippi. She died in 1848. His next marriage was with Miss Nannie T. Mills, of Aberdeen, who died in 1857. In 1860 he married Miss Lou Leigh, daughter of the Rev. Hezekiah G. Leigh, formerly of Mecklenburg County, Virginia, and the founder of Randolph Macon College. She died in 1863, during the absence of her husband in the army, and in 1866 he married Miss Annie Cornelius, of New Orleans, daughter of William Cornelius, Esq., a prominent lawyer of that city. This estimable lady survives him.

As a lawyer, Colonel Sale possessed many eminent qualities. While he may not have been distinguished for that coruscating brilliancy of imagination which Shakespeare characterizes as a

"fine frenzy," he possessed an accurate perception, a sound and penetrating judgment, and an indefatigable power of application. Hence his knowledge of the law was deep and thorough, and his arguments lucid and logical. So careful was he of profound research, and so patient of investigation, that he never appeared in court without having made a thorough preparation, whatever may have been the nature of his case.

He was unswerving in his integrity and stern devotion to principle, was conscientiously faithful to the interest of his clients, but spurned a cause which he believed to be unjust. His abhorrence of anything like fraud was exemplary and pronounced, and he never lost an occasion to lash the iniquity of knavery. Chivalrous and magnanimous in his disposition, he had no sympathy for the illiberal and the mercenary, and brought all the powers of his mind and all the energies of his nature to bear in the elimination of truth and the vindication of justice. These well-known features of his character engaged universal confidence in him as a lawyer, and the highest respect for him as a man.

Blended with his legal acquirements and the sterner traits of his character, Colonel Sale possessed a nature tenderly sensitive to the beautiful and the sentimental. He was fond of poetry and music, and in spare hours often quenched his æsthetic thirst in the Pierian springs and the fountains of Parnassus. His collection of paintings evinced a cultivated taste for the fine arts, and his fondness for literature was exemplified in the scope and excellence of his library.

He was also bland and courtly in his bearing, dignified and polished in his demeanor, and altogether engaging in his manners. The presentation and conduct of his cases were calm, methodical, and clear, and when he was not aroused by his scorn of undue advantage, were suave, courteous, and conciliatory. That he was a successful lawyer was but the natural result of these qualities, and he enjoyed a lucrative and enlarging practice to the day of his death.

While his patriotic heriosm and professional eminence shed a halo around his character, there were few men who have gone down to their graves clad in the robes of a more spotless purity;

and, as Sir James Mackintosh said of Mr. Grattan, "The purity of his life was the brightness of his glory." His patriotism cherished the honor of his country, his ambition sought the mastery of his profession, his love revelled in the hallowed precincts of his home circle, while his hopes, buoyed by his unswerving faith, feasted upon the promises of divine revelation.

The religious character of Colonel Sale was in the highest degree bright and exemplary. He had long been a strict member of the Methodist Church, and died, as he had lived, in the enjoyment of all the hallowed influences of Christianity. The *lady in white* attended upon the death of her votary.

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## WILLIAM F. DOWD.

I cannot by any means subscribe to that *materialistic* doctrine which would consign genius and intellectual culture to the narrow sphere of an earthly existence, and which would send us from this world disrobed of all intellectual graces, with no conception but that of accountability, and with no endowment but an embryo capacity for an existence certified only by the dim scroll of religious faith or the blank sheet of infidelity.

There is with every one, notwithstanding the dogmas of casuists, an inward revelation that the acquirements and treasures of the mind are immortal, and, as the Greeks expressed it, *το αιονιον κτῆμα*, "possession forever," and when we are told that "angels desire to look into these things" we are reminded that the cravings of the intellect are manifested even around the very throne of heaven, and there continues to weave the golden threads of thought, and gather its ambrosial food—to rise higher and higher until it is merged in the zenith of illimitable light. It must be believed, too, that the gifts of genius are in part the talents of the parable, and that its proper development is the usury demanded.

This everlasting quality was possessed in an eminent degree

by the subject of this sketch—a genius which has left behind it a superb mark, a proud niche in the column of legal fame.

William Francis Dowd was born in the State of South Carolina, at Society Hill, in the District of Darlington, on the 31st of December, 1820. His paternal ancestors were of Irish origin, and were distinguished as soldiers in the war of the American Revolution. His father was a captain in the war of 1812, and was afterwards a Baptist clergyman noted for his strenuous advocacy of the missionary interest, and for his exertions towards the establishment of educational institutions. His mother, who had been educated at the Moravian School of Salem, in North Carolina, was a lady of culture and refinement; and to her teachings Colonel Dowd always attributed with distinguished pride those ambitious aspirations and eminent qualities which achieved his success in life.

In 1832 young Dowd emigrated to the State of Tennessee with his parents, who settled on a small farm on Forked Deer River, near the town of Jackson. Here he was reared to manhood, and here, during the frequent and protracted absences of his father on ministerial duties, he attended, during the daytime, to the improvement and cultivation of the farm, and at night listened to the instructions of his amiable and devoted mother, who inspired him with that spirit of application and thirst for knowledge which attended him through life. He also attended at intervals a common school in the vicinity, and was maintained a short time at an academy in Brownsville.

In 1841 the family removed to Mississippi and established its residence in Monroe County, near the village of Smithville. The mind of his aged father had now become greatly impaired, and young Dowd found himself burdened with the main charge of the family, and with the responsibility of educating his younger brother and his sister. He continued to labor with his own hands for their support and promotion, but the dull and monotonous routine of farm drudgery did not satisfy his intellectual appetite and the cravings of his ambition. He longed for a sphere in which his conscious genius could assert its claims to the notice and respect of his fellow-men. The law presented its boundless field and its shafts of glory to his imagi-

nation, and, encouraged by his cultured and ambitious mother, he entered upon its study with a determination and avidity which predestinated at once a successful career. He continued, however, his attention to the farm, and taking his Blackstone with him to the field, he would select some shady spot where he could observe the progress of the laborers, and there pore over those great principles which he was afterwards to elucidate with so much depth and brilliancy. And to-day a tree near the roadside is pointed out by his old neighbors as having been a favorite beneath whose shady boughs he pursued his study, all absorbed and heedless of the jeers and jokes hurled at the young disciple of Coke by the rustic denizens who passed that way.

He was admitted to the bar about the year 1846, and made his first appearance at the April term, 1847, of the Monroe County Court. He was then a member of the firm of Coopwood, Herbert & Dowd, of Aberdeen. His very first efforts commanded the attention and admiration of the court and the older members of the bar, and caused him to be recognized at once as a young man of decided genius and great promise.

About this time he became also the editor of a newspaper published in Aberdeen in the interest of the Whig party, which he conducted with skill and ability, and without relaxing his application to his chosen profession. In 1854 he was married to Miss Ann W. Brown, daughter of Colonel James Brown, of Lafayette County, Mississippi, a lady of accomplished culture and many distinguished graces; and so great had become his popularity as a successful advocate that his professional income during the year of his marriage is said to have reached the amount of twenty thousand dollars.

He was an unswerving advocate of the doctrine of States rights, favored secession as the only remedy against Federal usurpation, and upon the advent of the civil war promptly marshalled all his energies for the conflict; and, under a commission from the Confederate Secretary of War, raised and mustered for the duration of the war the 24th Mississippi Regiment of Infantry, of which he became colonel. His first engagement was at the battle of Corinth, in which his regiment took a dis-

tinguished part, holding with desperation a large force of the enemy in check while the bloody drama of the day was being enacted. At the battle of Perryville he acquitted himself with conspicuous gallantry, and at the battles of Lookout Mountain and Missionary Ridge the 24th Mississippi, led by Colonel Dowd, gained a brilliant wreath of the glory of those two terrible days. After this his health became too feeble for field service, and he was appointed by the President one of the judges of the military court for North Alabama, which position he held until the close of the war.

On the return of peace he again opened the doors of his office, and in 1865 entered into a copartnership in law with Colonel Sale and Hon. James Phelan, which continued until the year 1867, when it was dissolved by the voluntary withdrawal of Colonel Phelan. The firm of Sale & Dowd was then formed, and existed until dissolved by mutual consent in 1876. These firms are celebrated in the legal annals of the State for the great learning and ability of the gentlemen composing them.

After his severance with Judge Sale, Colonel Dowd continued the practice alone, and his business was at all times more than equal to his physical ability, which, becoming more and more impaired, finally gave way beneath the onerous burdens which his mental energies imposed upon it. His intense and continued application would brook no restraint, his ambition to achieve would listen to no bodily rebuke, and he fell on the plain of his greatness with the same spirit with which he leaped into the field. He died at his home in Aberdeen, on the 28th of November, 1878.

As a lawyer Colonel Dowd stood in the front rank of the profession, and his mind seemed to be singularly adapted to its utmost requirements. He took especial delight in developing and applying its most abstruse and intricate doctrines. It was the kind of food which the high order of his genius demanded, the sphere of well-contested and lofty excellence which suited his ambition, and where his superior intellect found a goal worthy of its noblest efforts. He loved its labors, its clashes, and its excitements. Its difficulties were the choice feasts of his soul, and its triumphs the crown jewels of his life. He had

mastered the law in all its branches, was thoroughly familiar with its fundamental principles, which, with his keen perception and aptness in analogy, gave him rare powers of discrimination, of detecting the weak points in the positions of his adversary, and of invoking every available prop in support of his own.

His legal abilities were most strikingly exemplified in the discussion of subtle and abstract questions of law, and his genius glowed with the most splendor in assailing arguments which were apparently unanswerable. But in no department of the science or features of its practice did he lack those powers which command success and win the meed of fame.

His logic was accurate, forcible, and repellent of assault. His powers of analysis extended to the confines of logical divisibility, and his synthesis was characterized by a bold yet closely linked and unbroken chain of reasoning ; and when all his forces were marshalled into action, a calm, sound judgment sat like Xerxes upon the rock of Salamis as generalissimo of the array.

He was fond of argumentation, prided himself in his logical alertness ; and while he was ever ready to signify his recognition of just claims and of good qualities, he was quick to detect chicanery and discrepancies, and his criticism of these was often severe. His repartee was ready and apt, and the edge of his satire sometimes painfully keen, yet he never indulged in vituperation and abuse, and under ordinary circumstances he was a paragon of gentlemanly courtesy and of refined professional ethics.

His powers of endurance were great, and he possessed a remarkable capacity for intense and continued mental exertion. The preparation of his cases was laborious and elaborate, and he made it his invariable custom to search for and cull every feature available to his case from the reported decisions of both England and America. Hence his positions were generally impregnably fortified, while his vivid memory and ready command of his resources rarely permitted him to be surprised or placed in a disadvantageous attitude.

He was equally skilled in law and in equity, while his ability and success in criminal defence was of a superior character ; and his extensive practice, which extended over the counties of

Northern Mississippi and to the Supreme and Federal courts of the State, was never too varied in its features for the versatility of his genius. The cases in the argument of which he perhaps made the greatest reputation before the Supreme Court were those of Narcissa Scruggs *vs.* The Memphis and Charleston Railroad Company; Well *et al. vs.* The Board of Supervisors of Pontotoc County; and The State Board of Education *vs.* the City of Aberdeen. But it was before the United States Court that he won his proudest laurels; and it fell to his lot to be engaged before that court in one of the most remarkable and important cases ever brought before a judicial tribunal of this country.

Soon after the enactment of the notorious Enforcement Law a large number of citizens of Monroe County, Mississippi, were, without discrimination, save as to politics, arrested upon process issued by virtue of an indictment presented by a grand jury of the United States for the Northern District of Mississippi, charging them with the murder of a negro residing in that county, and were carried by the United States marshal before the Federal District Court, then in session at Oxford. Colonel Dowd, with General S. J. Gholson and others, was employed for the defence, and immediately filed a petition for a writ of *habeas corpus*, upon the trial of which the relators traversed the return of the marshal as to the validity and lawfulness of the indictment and *capias*, and the authority by which the prisoners were held.

This was a case well calculated to kindle all the fires of genius and to test all the powers of the mind. It was the first attempt made to enforce this despotic law, and involved its constitutionality; invoked a thorough and penetrating knowledge of the features of our complex system of government, the source and extent of Federal power, and the nature of its grant, whether general or specific, expressed or implied, and the rights of the State involved. In the investigation of these great and vital questions they had no guidance of precedent, no illuminations of any fixed formulas, but were compelled to coin their arguments from the crude ores of principle and stamp them with the superscription of analogy; to hew a pathway for the courts, and

one that would shed some light upon the dark destiny of their country. Yet, actuated and inspired by the spirit of patriotic devotion, and a dutiful determination to achieve justice for their clients, they rose to the height of the subject, and spoke, with manly candor, words of warning which fell like the omens of fate upon the ear of the Government.

Colonel Dowd made the chief and closing argument, in which he completely and forever paralyzed the features of this bloody bill, and clothed it in the garb of everlasting indignation and scorn in the eyes of every just and patriotic man. Had he achieved nothing before, his efforts on this occasion would have entitled his patriotic eloquence to a place by the side of that of Mr. Pitt in his precocious splendor, of that of Pulteney in the meridian of his glory, and of that of Lord Halifax when, in the ripeness of age, his speeches on the "Exclusion Bill" electrified Britain from John O'Groat's to Land's End.

Impelled by its intrinsic merits, by the importance of the case and the magnitude of its issues, I have been constrained to introduce the main portion of Colonel Dowd's argument, both as an illustration of his legal character and as an elucidation of the chief features of the American Government, as distorted by the throes of the civil war.

In closing the argument on the part of the relators, Colonel Dowd rose and said:

"*May it please the Court:* To say that this case is one of surpassing interest and importance is to give a poor, beggarly account of the real magnitude of the great principles involved. Under all circumstances the trial of a human being for a capital crime awakens the deepest interest in the minds of the court, jurors, and counsel, and involves the gravest responsibilities. But here we have at stake the lives of twenty-seven of the most respectable citizens of Mississippi; men of individual character and personal responsibility; men with reputations untarnished with crime, unspotted by suspicion, bearing names known and honored when Mississippi was a Territory: one a gray-haired, feeble old man, who has nearly lived out his threescore years and ten. Others are the sons of the pioneers of our State, and have been on the plantations cleared by their sires more than

half a century. These names include our entire neighborhood ; none are left but women and children.

" But, if your Honor please, this prosecution aims a stab at the heart of the Constitution of the United States, and of every State in the Union. If successful, it annihilates the whole judicial system of Mississippi, and of every other State. While it concedes the *right*, it proposes to rob every American citizen of the *benefit* of a speedy and impartial trial by a jury of his peers, chosen from the vicinage or county in which he resides, by dragging him a hundred miles from his home to a circuit or district court of the United States, there to be tried by a jury selected from the whole district ; by a marshal who holds his office at the will of the Government, and who is compelled to organize the jury according to the dictates of the prosecution !

" In the long list of judicial murders and butcheries in the reign of James II., the *right* of trial by jury was seldom denied, but the *benefit* of that immortal form of trial was denied by the selection of twelve partisans of the Crown, organized to convict. The list of wrongs embraced in the words ' against life, liberty, and property,' as used in all the great charters of English liberty, and in all the constitutions of this country, include every cause of which the State courts have jurisdiction ; and if the Congress of the United States can legislate for the punishment of every such offence, and confer on the Federal courts exclusive jurisdiction, the entire judicial systems of the States are blotted from existence.

" The testimony shows that an awful crime has been committed. Alexander Page, a negro, a citizen of Mississippi and of the United States, was torn from the arms of his wife, in the middle of the night, by a band of disguised ruffians, and murdered in cold blood ; even his appeal to his murderers for time to make a last prayer to his God, for mercy on his soul, was barbarously refused : unshrouded, unheralded, unknelled, he was hurried into eternity ! It was a crime only surpassed in atrocity by the Nathan murder in New York, by the attempt to roast the four brothers alive in their burning dwelling in Indiana, and others of a similar character, with which the press of the Northern States daily teems.

"But there is a crime surpassing in turpitude all the horrors of all other murders blended together, and that is judicial murder.

"The court which usurps jurisdiction and consigns its victim to the gallows without authority of law is guilty of this unpardonable sin. It is difficult to believe that even the great atonement can obliterate the offence from the records of eternity.

"I trust and believe that the wild clamor which rings out over the whole Union, calling for the suppression and punishment of the Ku-Klux clans, will not be permitted to enter the charmed circle of this court-room. All great national and judicial crimes have been committed in the name of law, or of order, or of religion.

"The massacre of Saint Bartholomew was committed in the name of our holy religion, amid the prayers and tears of the perpetrators, and was hailed by a part of the Christian world with thanksgiving and praise. The judicial butcheries which blacken the pages of English history were all committed in the name of the Lord, or in that of law and order! In all ages and in all times the tyrant or tyrants who destroyed the liberties of their countries did so under the pretext of protecting life, liberty, and property. Necessity is now known as the tyrant's plea. Under this plea, and this alone, the avowed necessity of suppressing the wicked and rebellious Ku-Klux clans; under the false cry, known by the utterers to be false, that the State courts and State authorities are incapable of doing justice, this prosecution gravely proposes to your Honor to assume jurisdiction in the case of an alleged murder of a citizen of Mississippi, by other citizens of Mississippi, on the soil of Mississippi. The real prosecutors in this case are concealed. It is certain that the poor ignorant widow of the murdered man has been put forward by men behind the scenes, prompted by motives of private vengeance or treason to the Constitution, and restrained only by the cowardice that belongs to malignity. The testimony proves beyond all question that the witnesses for the prosecution have been suborned, and, so far as it affects the relators in this cause, that it is perjury in its most revolting form. Revenge has

cohabited with perjury, and this prosecution is the offspring of the loathsome amour.

"The law officer of the crown and the other gentlemen of the bar who conduct this prosecution have been fatally and cruelly deceived. Even the Governor of the State, out of the secret service fund of $50,000, has employed able counsel to aid this prosecution in crushing the jurisdiction of the courts of Mississippi. I am sure that able lawyer and statesman was as cruelly deceived in reference to the true objects and aims of this prosecution as the other gentlemen of the bar who conduct it.

"Before entering on the discussion of the main, vital issue involved in this cause, I propose to refer briefly to the law of Bail under the Constitution and laws of the United States.

"I. Bail in all cases, except capital crimes, is a matter of right. In capital cases it is a matter in the sound discretion of the court. For this purpose testimony was introduced: The law requires that on the return of the writ of *habeas corpus* the judge or court shall hear 'testimony, and inquire into the nature and circumstances of the case, and the usages of law.' 1 Brightly's Digest, 90–91; Habeas Corpus Act, ib., 301–2; 2 Brightly's Digest, 213, 214; Conkling's Treatise, 577–579.

"In allowing a traverse of the return, and the admission of evidence on the trial of a writ of *habeas corpus*, the acts of Congress are more liberal and comprehensive than the laws of Mississippi. See Code, 365.

"The writ may be granted after indictment as well as before, and the only difference consists in the fact that after indictment the court may bail but not discharge on the evidence, if the court has jurisdiction. But in all cases when the court has no jurisdiction, or if the relators under any circumstances are held in custody without authority of law, they are entitled to a final discharge.

"The following cases in the United States courts sustain these views: *Ex parte* Milligan, 4 Wallace, 118; Kearn's case, 20 Curtis, 89–91; United States *vs.* Hamilton, 3 Dallas, 17; *ex parte* Yeager, 8 Wallace, 94.

"The object of imprisonment is not to punish, but to secure the attendance of the prisoner at the final trial. It is brutal and

inhuman to punish by imprisonment or otherwise before the party is found guilty. 8 Barbour, S. Court R., 162, 3–8.

"In Mississippi the same principles are settled in the following cases: *Ex parte* Moore, 36 Miss. R., 137; Beal *vs.* The State, 39 Miss. R., 715; Wray's case, 30 Miss. R., 673.

"Are not the parties entitled to a discharge in this case, when the indictment is manifestly founded on perjury?"

Colonel Dowd then referred to the testimony, and called attention to its contradictions, discrepancies, and the false identification on the part of the witnesses who had pointed out as being among the prisoners whom they recognized at the killing, certain gentlemen of Oxford who were bystanders, and had never been in Monroe County. He then proceeded:

"Under the ruling of the court I am forbidden to comment on the testimony, and I forbear. I only refer to it to maintain the proposition that the true intent, meaning, and spirit of the acts of Congress require the court to discharge a prisoner when it is clear that he is held in custody by an indictment conceived in sin and shapen in iniquity; procured, upeld, and maintained by perjury.

"II. This indictment, stripped of the immaterial verbiage, amounts to nothing more than the ordinary indictment in the State courts, against citizens of Mississippi, for the murder of a citizen of Mississippi. It is wholly unauthorized by the Constitution or laws of the United States, and if valid, the Federal courts have exclusive jurisdiction of every case of trespass upon person or property, of all assaults and batteries, arson, burglary, robbery, and larceny, committed in the respective States. The first count of the indictment was 'that the defendants banded and combined together, and went in disguise upon the premises of Alexander Page, formerly a slave, and a man of color, now a freedman, and who was, under the Constitution of the United States, entitled to the protection of his life, liberty, and property, and with intent to oppress, threaten, and intimidate him, the said Alexander Page, and with intent to hinder and prevent him in the protection of his life and liberty, secured to him by the Constitution of the United States, and then and there did kill and murder the said Alexander Page.'

"Nothing can exhibit in a stronger light the desperate straits to which the accomplished pleader, who drew this indictment, was driven, than the extraordinary fact that it is attempted to be founded on a provision of the Constitution of the United States! Its conclusion is not 'against the form of the statute in such case made and provided,' but its language is 'contrary to the provision of the Constitution of the United States.'

"The bar and bench of the world will be startled at the announcement that an indictment is founded on the organic laws of the land, on a constitutional provision, on a supposed grant of power to Congress, and not on a Congressional enactment to carry that power into execution. An indictment founded on Magna Charta! An indictment founded on Petition of Rights! But it is not sought to be fastened on a constitutional grant of power to Congress, but on a prohibition, a limitation on the power of the States.

"The last clause of the first section of the Fourteenth Amendment declares that '*no State* shall deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' The pleader could not weave, twist, or work this language into the indictment. He was therefore driven to the necessity of averring that the relators committed the deed 'with intent, there and then, to *hinder* and *prevent* him, the said Alexander Page, in the protection of his life and liberty, so secured to him by the Constitution of the United States.'

"To *prevent* him in his *protection*. Not to hinder or prevent the Government from the exercise of its power as a protector; that would be treason, or akin to it. But poor Page was killed to *prevent* him from his own protection. I never heard of but one such perversion of language. The brave hunter, holding a bear by the ears in a canebrake, finding his strength failing, shouted to his companions to run up to him and *help him let go*.

"There are propositions in morals, law, and philosophy that need only to be stated to receive the unqualified condemnation of mankind.

"The second count in this indictment is founded on the sixth

and seventh sections of the Enforcement Act, and avers, in substance, that the relators, citizens of Mississippi, disguised themselves and went on the premises of Alexander Page, another citizen of Mississippi, 'with intent to *hinder* and *prevent* him in the enjoyment of his personal security, secured to him by the laws of the United States, and him, the said Page, did then and there, on the 29th of March, 1871, did kill and murder, contrary to the form of the statute,' etc. This is nothing more nor less than an indictment for murder in the ordinary form, with a detail of the circumstances of aggravation, which is not a violation of any statute of the United States.

"The Fifth Amendment of the Constitution of the United States is not a grant of power to legislate for the protection of the life, liberty, and property of persons and individuals in the several States, but is a prohibition on the power of Congress. . . .

"For the first time in the political and judicial history of this country, it is boldly affirmed and plausibly maintained that the prohibition of a power means a grant of power. If this monstrous proposition cannot be maintained, the whole prosecution falls to the ground.

"The legal term 'grant' has its origin in the feudal system. It was a gift or conveyance from the crown, clothed with absolute power, of lands or franchises, or special privileges to inferiors, or to the subjects of its bounty. What is a prohibition? It is to interdict, to forbid. The sovereign, the creator, commands the creature, 'Thus far shalt thou go, and no farther.' To confound the two terms, and make prohibition mean grant, is to confound all previous meanings and use of words, and to insult the understanding of mankind.

"It is impossible to form a correct opinion of these words without a recurrence to first principles and to contemporaneous history.

"When we attempt to construe the constitutions and laws of European States, we must start with the theorem that all power was vested in the crown. This power is supposed to be derived from God himself, and kings reign by divine right. All the powers enjoyed by their legislative bodies, all the privileges

and immunities enjoyed by citizens or persons, are grants from the king, voluntarily made, or wrung from his reluctant grasp at the point of the sword by powerful barons, or by the simultaneous uprising of a whole people, amid the throes, agony, and blood of a mighty revolution.

"But on this continent the people are sovereign, and the source of all power. First the State Governments were formed, and certain powers were granted to them. Then the States and the people created the Government, the Constitution of the United States, and granted to it certain other powers. The original Constitution was mainly a grant of powers, with a few limitations on the powers of the States. Great alarm was manifested, and a widespread dissatisfaction expressed, that the new Government under its implied powers would destroy the liberties of the people and overthrow the State Governments. To still this gathering storm, the first ten amendments of the Constitution were proposed and adopted.

"All these amendments have received a judicial construction, and are declared to be prohibitions on the powers of the Government, and not grants of power from the people of the States.

"The Ninth Amendment declares that the enumeration in the Constitution of certain rights shall not be construed to *deny* or disparage others retained by the people.

"The Tenth Amendment declares that 'the powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively or to the people.'

"There stand the solid, massive granite walls between the reserved powers of the States and the people and those delegated to the General Government. They may be battered down with cannon; the usurpations of Congress, combined with a corrupt or cowardly judiciary, may undermine them; but they SHALL stand while a remnant of the spirit of our honored ancestry lives in the hearts of the American people. It is certain they will never fall before the blasts of political ram's-horns, although the circuit may be completed more than seven times.

"Grant, for the sake of argument, that these several prohibitions on the legislation of Congress, on the powers of the Federal

Government, may be termed guarantees, and that the rights to life, liberty, and property are *protected* in one sense, or *secured* by the prohibitions on hostile legislation on the part of Congress or the States, the great question remains unanswered, Do those limitations of power confer on Congress the power to legislate or provide for the punishment of local crimes or offences committed in the several States?

"Alexander Hamilton, one of the authors and great expounders of the Constitution, declared that these prohibitions embraced in the first ten amendments of the Constitution were unnecessary; because, he said, they are in reference to powers not granted by the people of the States; and how can Congress legislate on any subject unless the power is conferred in express terms or by necessary implication?

"And with the ken of a prophet he predicted the very scene that is being enacted here to-day, when he declared that, if these amendments were adopted, the enemies of constitutional liberty might seize upon them as a pretext to legislate upon forbidden subjects.

"The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of the particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself. The limitations on power, if expressed in general terms, are naturally, and we think necessarily, applicable to the government created by the instrument. They are *limitations* of power granted in the instrument itself; not of distinct governments framed by different persons, and for different persons. These restrictions are obviously intended for the exclusive purpose of restraining the exercise of power by departments of the General Government. Some of them use language applicable only to Congress; others are expressed in general terms.

"In every inhibition intended to act on State power, words are employed which directly express that intent.

"It is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were entertained that those powers, which the patriot statesmen, who then watched over the interests of our country, *deemed essential to union*, and to the attainment of those invaluable objects for which the union was sought, *might* be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments *to guard against the abuse of power* were recommended. These amendments *demanded security against the apprehended encroachments of the General Government.* Baron *vs.* City of Baltimore, 7 Peters' R., 243–7, 8, 9.

"Yet the law officer of the crown absolutely quotes this decision in support of the apprehended encroachments of the General Government! The same doctrines are maintained in Puryear's case, 5 Wallace, 476; Twitchell's case, 7 Wallace, 324; Fox *vs.* State of Ohio, 5 Howard, 434; Withers *vs.* Buckley, 20 Howard, 90, 91.

"In the original Constitution there are prohibitions on the powers of the States as well as on the powers of the Federal Government (citing the 10th section of the 2d article).

"It is a remarkable fact that Congress in all its legislation, extending over nearly a century, has never attempted to legislate against a sovereign State, or on subjects embraced within the several limitations on the State and National Governments before enumerated.

"The States have often passed laws impairing the obligation of contracts, and emitted bills of credit. Did Congress ever commit the inconceivable folly of attempting to make it a criminal offence, and punish the individuals for obeying the laws of their State? The honor of asserting such a power remained for this prosecution. In the century of our national existence, which has nearly passed away, lived Hamilton, and Jay, and Jefferson, and Adams, and Madison, and Clay, and Webster, and Calhoun, and Marshall, and Story, and Parsons, and Taney, and last,

though not least, our own great Sharkey. It never occurred to any of these illustrious statesmen and jurists that a prohibition was equivalent to a grant.

"But the learned gentlemen for the prosecution gravely insist that Congress has passed laws to punish individuals for counterfeiting coin of the United States, a power that is prohibited to the States.

"They seem strangely to forget that this legislation is not founded on the limitation on the power of the States, but upon an express grant of power in the 8th section of the 2d article: 'Congress shall have power to coin money, regulate the value thereof,' etc. This power was vested in the Federal Government, and prohibited to the States. It is therefore *exclusive*, and the power to punish for the crime of counterfeiting is absolutely necessary to carry into effect one of the most important powers delegated expressly.

"How, then, can the Government of the United States act upon the clauses in the Constitution imposing limitations on the powers of Congress and of the States? If the State of Mississippi, in violation of the 1st section of the Fourteenth Amendment, shall pass a law 'to deprive any person of life, liberty, or property, without due process of law, or a law denying to any person within its jurisdiction the equal protection of the laws,' what would be the remedy? Can a Congress, filled with partisans maddened from an exciting contest, determine whether the law is a violation of this provision of the Constitution or not? The Legislature of the State might hurl back her anathemas at Congress, and demand of her officers the execution of the law. It is mainly for this reason that the Federal courts of the United States were established. The judiciary is a co-ordinate department of the Government, and is entirely independent of the legislative and executive. An absolute despot combines all these powers; and it is immaterial, for all the practical purposes of life, whether this despot is called a kaiser, an emperor, a king, a czar, a parliament, a congress, or a president.

"Every government must in its essence be unsafe and unfit for a free people where a judicial department does not exist *with powers coextensive* with the legislative department. Where

there is no judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility, or the other departments of the government *must usurp powers* for the purpose of commanding obedience, to the destruction of liberty. The will of those who govern will become, under such circumstances, absolute and despotic; and it is wholly immaterial whether such power is vested in a *single tyrant or an assembly of tyrants.*

"Montesquieu says that there is no liberty if the judiciary power be not separated from the legislative and executive powers. Personal security and private property rest entirely upon the wisdom, the stability, and integrity of courts of justice. A despotism is rendered more intolerable and oppressive when the actual administration of justice is dependent upon caprice or favor, *upon the will* of the rulers, or the influence of popularity. When *power* becomes *right*, it is of little consequence whether decisions rest upon *corruption* or *weakness*, upon accidents of chance or upon deliberate wrong. A judicial department is indispensable to administer justice and protect the *innocent from injury and usurpation.*

"The power of interpreting the laws involves necessarily the function to ascertain whether they are conformable to the Constitution or not; and if not so conformable, to declare them *void and inoperative.* As the Constitution is the supreme law of the land, in a conflict between that and the laws, either of Congress or *the States*, it becomes the duty of the judiciary to follow that only which is of paramount obligation. Otherwise the acts of the legislative and executive would in effect become supreme and uncontrollable, notwithstanding any prohibitions or limitations contained in the Constitution, and usurpations of the most unequivocal and dangerous character might be assumed without any remedy within the reach of the citizens. Story on the Constitution, Sec. 1573; Federalist, No. 78; 1 Kent's Coms., Sec. 20, p. 420–6.

"To make these great principles enduring and effective, the judges hold their offices for life, and are regarded as the bulwarks of the Constitution against legislative encroachments.

"It is, then, a naked, unmitigated usurpation of power for

Congress to declare, under the 1st article of the Fourteenth Amendment, that the law of a *State* impairs the rights of personal security and private property.

"But it is contended that if Congress cannot indict and punish a State, it can usurp the powers of the judiciary, determine when a *State* shall deprive by law any person of life, liberty, or property, and then proceed to punish the officers and people of the State for obeying its laws, by direct legislation.

"To arrive at this monstrous perversion, the words of the Constitution are stricken out, the word *State* is obliterated, and the word person inserted in its stead, and it is made to read thus: 'Nor shall any *person* in any State deprive any other person of life, liberty, or property without due process of law,' and Congress may enforce this by appropriate legislation. This would strike down at one blow the entire judiciary system of the States. If the eminent lawyers who compose the Judiciary Committee of the Senate had been bereft of all patriotism, a proper regard for their own reputations, and a decent respect for the opinions of mankind, would have deterred them from the commission of a deed so fatal to the liberties of their country. Does any sane man believe that the great States of the Union would have committed suicide by the adoption of such an amendment? Congress could immediately have passed laws to punish murder, arson, larceny, assault and battery, to allow actions for damages for trespasses to the person and property in the Federal courts, and, as will be hereafter shown, could make the jurisdiction of these courts *exclusive*.

"When the law officer of the crown and the learned retained counsel tell this court; when the Congress of the United States declare, in the Enforcement Bill, that the laws of the United States—the *Government* of the United States—GRANTS TO THE PEOPLE their rights and privileges, they openly throw around their shoulders the imperial purple, and trample down all that is sacred and dear to every American citizen.

"Can the *creature* grant to the *creator?* The people, the sovereign people of the United States, and the States, have granted, delegated, certain powers to the Federal Government, and reserved all others to themselves. The ungrateful creature now

turns on its creator, and says, 'I grant you rights and privileges!' It is blasphemy! But Congress never intended to give birth to such a legal and moral monster. It is an unwarrantable perversion of the Constitution and laws, and is the offspring of this abominable prosecution. When we shall hereafter show the true intent and meaning of the 6th section of the Enforcement Act, I expect to defend successfully the Government of my country from this aspersion on its good name and fame.

"Admitting, for the sake of argument, that the rights of the people of the several States to life and property are *secured* by the limitation, in the Constitution, on the powers of the States and of Congress, that the rights, privileges, and immunities of American citizens WERE GRANTED BY THE SOVEREIGN PEOPLE, *and defined* in the Constitution, counsel for the prosecution *assume and take for granted* the whole question at issue when they say that Congress can pass laws to punish local offences against person and property, and confer on the Federal courts jurisdiction to try *persons* in the several States for murder, larceny, and trespass to person and property.

"'The powers not *delegated* to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' Tenth Amendment Const.

"Where did the power to try persons in a State for a violation of the criminal laws originally reside? It is not denied that it belonged exclusively to the Legislature of the State to define crime and prescribe its punishment; to the courts of the several States to enforce law thus adopted, before the formation of the Federal Government. The right to life and property, the power of the State courts to punish crime, belonged to the people and to the respective States, when the ground on which our magnificent national Capitol stands was a wilderness. It came with the Mayflower; it fastened on Plymouth Rock; it was the solid, imperishable granite, laid as the foundation of every American State. *The right to life and property* are not words of modern origin; they are older than the common law of England; they are recognized--not *granted*—by the law of Moses,

and their history goes back to the origin of the human race, and of *all* human government. This right is a part of the common law of all nations through all time. It was a part of the common law before it was written, and is interwoven as a part and parcel of the British constitution. When and where did the States, or the sovereign people, delegate to Congress or to the Federal courts the power to try local offences against life and property? Where shall this ragged, naked, wretched, vagrant power find a foothold in the Constitution and laws of the land? It is first located in the 6th section of the Enforcement Act; driven from this, it seeks a lodging in the 4th article of the original Constitution, providing that citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States; driven from this, like the vital spark in the dying body, it runs through all the lanes and avenues of the Constitution and the laws, and shrieks for help, but shrieks in vain: it dies right here, in this court-room, on the very spot of its origin.

"Judge Story says, in his immortal Commentaries: 'The Government of the United States is one of limited powers, leaving all residuary general powers in the State Governments, or to the people thereof. The jurisdiction of the General Government is confined to a few general objects which concern the general welfare of all the States. The State Governments have full superintendence and control over the immense mass of *local* interest in their respective States, which connect themselves with the feelings, the affections, the municipal institutions, and the internal arrangements, of the *whole population.*

"'THEY POSSESS THE IMMEDIATE ADMINISTRATION OF JUSTICE IN ALL CASES, CIVIL AND CRIMINAL, WHICH CONCERN THE PROPERTY, PERSONAL RIGHTS, AND *peaceful pursuits of their own citizens. The powers of the States extend to all objects which in the ordinary course of human affairs concern the* LIVES, *liberties, and property of the people!*' Story on the Constitution, Secs. 510–13; Federalist, No. 45 and No. 17.

"With what overwhelming power do these eloquent words, this massive logic, fall on the arguments of the prosecuting counsel! With the highest respect for their learning and ability, I must be allowed to say that, however lofty their aspira-

tions may be, however high they may elevate the structure of professional fame, it will never rise higher than *one Story!*

"Let us keep our eyes steadily on the great question. It is not whether the sovereign people guaranteed or secured in the Constitution rights of life and property, by prohibitions and limitations; not whether they defined citizenship and authorized Congress to legislate on the subject; but did the States or people grant or surrender to the Federal Government the power to punish local crimes and misdemeanors against personal security and private property?

"If this power was never surrendered by the States, or conferred by the people on Congress, it follows that the words used in the 6th section of the Enforcement Act, to the effect that if two or more persons conspire and go in disguise on the premises of another, with intent to intimidate any *citizen*, with intent to hinder his free exercise and enjoyment of *any right or privilege granted or secured to him by* the *Constitution or laws of the United States*, signify an unmitigated, naked usurpation of power by Congress, and it is the solemn duty of this court to declare it null and void. But, taking the whole act together, it is manifest that this was not the intention of Congress, as we shall hereafter demonstrate.

"'V. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside.' Fourteenth Amendment, Sec. 1. This is nothing more nor less than a clear definition of the class of persons who are citizens of the United States. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. This, as we have seen, is only a limitation on the legislation of the States.

"The privileges and immunities of a *citizen* are wholly distinct from the absolute rights of the individual. The Constitution everywhere uses the term person in reference to the absolute right of the individual as contradistinguished from the privileges and immunities as a citizen. The office of President of the United States, member of Congress, elector, cabinet officers, judges of the Federal courts, CITIZENS of the United

States, are all created by the sovereign people, with their privileges and immunities defined in the Constitution. Granting that Congress may legislate, and make it a felony to go on the premises of one of these officers, with intent to hinder him while in the performance of his duties, and with intent to deprive him of the privileges and immunities of his office, it certainly does not follow that the States have thereby surrendered their power to the Federal courts to punish a crime against the absolute rights of the individual. Your Honor is the judge of the district and circuit courts of the United States; if two or more persons in disguise were to enter this court-room, drag you from the bench, with intent to hinder and prevent you from holding your court, and discharging the duties of your office, it would be an invasion of your privileges and immunities as a judge, and Congress can make it a felony, and the Federal courts might inflict the punishment. But, sir, you are a resident of Lafayette County, Mississippi. If the same disguised persons were to go on your premises, while not in the discharge of your official duties, with intent to deprive you of your life, or to commit any other outrage on the person or property of R. A. Hill, as an individual, from motives of private vengeance, no impartial lawyer will contend that the State court would not have exclusive jurisdiction to punish the ruffians; and an indictment could not be maintained in the Federal court. If the honored and lamented President Lincoln had been assassinated while on a visit to his home in Illinois, and not in discharge of his official duties, would that great State have surrendered the right to try the assassins? Would any member of the able bar of that State say that, because of his privileges and immunities as President of the United States, the Federal courts could maintain jurisdiction to punish the assassins?

"A citizen of the United States is as much the creation of the sovereign people in the formation of the Government, and his 'privileges and immunities' are as much the same creation, as the 'privileges and immunities' of the office of President or judge.

"Before the formation of our Government a citizen of the United States had no existence. What are his privileges and immunities?

"1. First and foremost is the right of suffrage—the right to vote. This right lies at the foundation of the whole grand fabric of the Republic. If the murdered man, Page, had been exercising the right to vote, if any election had been in progress, if the assassins had gone to his premises to hinder or prevent him in the right of voting, this would have been an invasion of, and an attack on, him as a citizen. But this is not pretended in the indictment.

"2. An American citizen has the right or the 'privilege' to hold any office within the gift of the American people. If either of the ignorant, degraded black wretches who perjured themselves on this trial were a candidate for the office of President, or member of Congress, or if he held the office, Congress may legislate on the subject, and the Federal courts may punish persons for 'hindering and preventing him in the enjoyment of this right.'

"3. The 2d section of the 4th article of the Constitution provides that citizens of each State shall be entitled to all privileges and immunities of citizens of the *several States*. Incomprehensible as it appears, this provision is claimed by counsel as a grant or surrender by the several States of the exclusive power to try local crimes—for murder, arson, larceny, etc. It has too often received a judicial construction to admit of doubt or controversy.

"In a given State every citizen of *every other* State shall have the same privileges and immunities which the citizens of that State possess. They are not subject to the disabilities of alienage; they can hold property by the same titles by which every other citizen may hold it, and no other; discriminating legislation against them would be unlawful. Lemon *vs.* The People, 20 New York R., 608.

"The right of a citizen of one State to pass through or to reside in any other State for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of *habeas corpus;* to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property, either real or personal, may be mentioned as some of the particular privileges and immunities of citizens which are clearly

embraced in the provision of the Constitution. Corfield *vs.* Cargill, 4 Washington C. C. R., 380–1 ; Smith *vs.* Moody, 26 Indiana R., 302.

"But it does not embrace privileges conferred by the local laws of the State. Connors *vs.* Elliott, 18 Howard, 591 ; Murray *vs.* McCarty, 2 Manford, 393.

"Although this provision has stood in the Constitution for nearly a century, the great statesmen of the times have never found it necessary to legislate on the subject. Granting that Congress has the power to impose fines and penalties on a person in one State for hindering and preventing a citizen of another State in the enjoyment of the privileges and immunities secured in this clause of the Constitution, how is it possible, by any perversion of language, or any rule of construction, to make its provisions embrace the facts stated in this indictment ?

"Page, the murdered man, was not a citizen of another State, but of Mississippi ; and, it is alleged, was murdered by citizens of Mississippi. It was, therefore, a violation of the penal laws of Mississippi, and not an invasion of the privileges and immunities of a citizen of another State. Strange as it may appear, on this extraordinary perversion of this provision of the Constitution is thrown the main argument of the counsel for the Government.

"IV. A citizen of the United States, under our treaty stipulations with foreign powers, has the right to travel, trade, and carry on extensive commercial transactions everywhere beneath the star-lighted heavens—in the streets of London, or Peking, or St. Petersburg, on the land or on the sea ; he has only to exclaim, 'I am an American citizen,' and he is instantly covered with a shield no earthly power dare strike or assault. This was one of the proudest boasts of Rome. The protection extended to her citizens is celebrated in story and song ; and our Federal Government deserves all the eulogies thus bestowed on that celebrated empire. Yet while Rome armed her proconsuls with almost absolute power for the government of her provinces, she never interfered with the local administration of justice.

"If a State shall make or enforce a law which shall abridge the privileges or immunities of a citizen of the United States,

as we have before seen, it then devolves on the judicial department of the Government, the Federal courts, to determine on the merits of the law, and declare it unconstitutional and void.

"It will thus be seen that there is a wide field for the legislation of Congress to protect and maintain the rights, privileges, and immunities of an American citizen without usurping the reserved powers of the States to punish *persons* or *individuals* for local offences against the criminal laws of the State.

"Half the controversies in the world arise from a misapprehension of the meaning of terms. What is the meaning of the phrase 'citizen of the United States'? He is a member of the political body which holds the power and conducts the Government through its representatives. He is, therefore, a constituent member of the sovereignty. Scott *vs.* Sanford, 19 Howard, 404–5."

Colonel Dowd here referred to the definition of this phrase, as already discussed by one of his associates, and then proceeded:

"What is meant by the 5th section of the Fourteenth Amendment, which declares that Congress may enforce by *appropriate* legislation the provisions of the article? The word 'appropriate' has received a judicial construction. It means that which is *necessary*.

"The 1st section clothes Congress with the power to protect the citizen *as such* in the enjoyment of his political rights. Under the 2d section it may apportion representatives among the States. Under the 3d Section it may legislate for the punishment of the class of persons described, for accepting or holding an office contrary to its provisions. The 4th section is but a limitation on the power of Congress and the States, and no legislation can be framed or had, or is necessary or appropriate.

"Having thus demonstrated that the sovereign people and the States have only conferred on the Government and Congress the power to protect its officers and citizens *as such*, and has withheld among the reserved powers the exclusive right to the States to define and punish all offences against the person and property within the limits of the States respectively, we now come to the consideration of the Enforcement Act, and the Civil Rights Bill, which constitutes a part of it."

Of these Colonel Dowd here entered upon an elaborate discussion, in which he commented at length upon their various features and their import, and contended that so far as they affect the case at the bar, these laws were not intended to violate the provisions of the Constitution ; but that, if the Enforcement Act admitted the construction placed upon it by the counsel for the Government, it was a palpable violation of the Constitution, a naked, unmitigated usurpation of power, subversive of the liberties of every American citizen, and the Federal courts must declare the act UNCONSTITUTIONAL AND VOID.

That the Civil Rights Bill was aimed solely at the hostile legislation of some of the States which were reluctant to admit the full equality of the negro race before the courts, and was never intended to give the Federal courts jurisdiction of an assault growing out of a personal feud between citizens or persons in the same State.

"It is not pretended," said he, "that the relators murdered Alexander Page under the color of any law or custom of the State of Mississippi, which deprived him of his equal rights as a citizen, and for which the 2d section of the act provides a remedy and prescribes the punishment of fine and imprisonment. But the astounding proposition is maintained by the counsel for the Government that the negro is not only made the political equal of the white man, but special privileges are conferred on him by this act, in the teeth of the statute that he shall have the EQUAL benefit of all laws. It is insisted that the negro wife may prosecute the murderers of her husband in the Federal courts ; but it is conceded that if a negro murders a white man, or one white man another, or a black fiend commits rape on a white woman, then the white friends of the victim cannot prosecute the offender in the Federal courts, but are confined to the State courts ! This is technically styled 'EQUALITY BEFORE THE LAW !'"

After commenting at length, and in an able and exhausting manner, upon the intention and proper construction of the various features of these acts, Colonel Dowd proceeded as follows :

"VII. Nothing can be more conclusive. Nothing which the

human tongue can utter will so utterly annihilate the whole argument of the counsel for the prosecution as a careful perusal of the 8th section of the Enforcement Act. It provides that 'the district courts of the United States, within their respective districts, shall have, EXCLUSIVE OF THE COURTS OF THE SEVERAL STATES, cognizance of all crimes and offences committed against the provisions of this act.' The Civil Rights Bill contains the same provision. If, then, the crime of murder, or arson, or burglary, or assault and battery, is committed in Mississippi by one citizen of the State against another, the offence can only be tried in the Federal court! If a trespass is committed by one citizen of Mississippi upon the property of another, both being citizens of the United States, the Federal court has exclusive jurisdiction. Counsel seek to avoid the force of this blow by asserting that this section of the act is unconstitutional! This will not do! If Congress has the power to define a crime, and fix its punishment, and to confer jurisdiction on the Federal courts, it has the power to make that jurisdiction concurrent with the State courts or exclusive in the Federal courts. This is as well settled as any rule in the annals of judicial decisions. Thus, in the Judiciary Act of 1789, the jurisdiction of the Federal courts to entertain suits between citizens of different States is made concurrent with the jurisdiction of the State courts. It was for a long time a disputed question whether, in a case where the Constitution authorized Congress to invest the Federal courts with jurisdiction, it had the power to make that jurisdiction concurrent with the State courts. But it has never been questioned that Congress might make the jurisdiction of the Federal courts exclusive. The illustrious Story maintained the former, and the majority of the court the latter view.

"In his able dissenting opinion, in the case of Moon *vs.* Houston, 5 Wheaton's R., 47–76, Judge Story says: 'Can the national courts be ousted of their jurisdiction by the trial of the offender in a State court? Would an acquittal in a State court be a good bar upon an indictment for the offence in the national courts? Can the offenders against the letter of the Constitution of the United States be subject, for the same offences, to be twice put

in jeopardy of life and limb? These are questions which cannot be answered in the affirmative.' "

Colonel Dowd here read and commented at length upon the opposing opinions of Judge Story, Judge Kent, and other authorities, upon the question of the jurisdiction of the Federal courts, and the power of Congress to make it concurrent or exclusive.

"It follows, inevitably—and no human ingenuity can avoid the conclusion—that if this indictment can be maintained on its allegations, and the proof taken in the cause, that a citizen of Mississippi who murders another cannot be prosecuted and convicted and punished in the State courts; if the doctrine contended for is true, the rights of property are as sacred as the rights of the person; are protected by the same constitutional and legal guarantees; and Congress may enact laws to punish, or provide for damages, in every case where the rights of property are invaded. Let this be established as the law of the land, and every State court crumbles into dust. This court could not try all cases of this character now pending in Mississippi in a half-century. The Federal Government must make every circuit in the State a district, and appoint its clerks, marshals, and judges. It is only necessary to contemplate the terrible picture to place on it the seal of your unqualified condemnation."

At this point Colonel Dowd entered upon the conclusion of his argument, in which he rehearsed the character and circumstances of the prosecution, and contended that the officers of Monroe County and the courts of the State were thoroughly disposed and fully competent to do their whole duty. He depicted in glowing terms the inevitable consequences had this first effort to strike down the entire judiciary of a State been made in New York, in California, or in Indiana. "This is not the cause alone," said he, "of a whole neighborhood of honorable gentlemen. Every American citizen has a deep interest in the struggle. If the jurisdiction is maintained, the Government of the United States is clothed with absolute and despotic powers. I plead for every American citizen! I plead for the generations who are to come after us! I plead the cause of justice and human freedom all over the habitable globe!"

Colonel Dowd concluded his argument with a lengthy and eloquent peroration, and closed with the following appeal to the court :

" From the final trial there is no appeal from your decision. The terrible responsibility rests on you alone. Discharge these men ! Order them, if you please, into the custody of the State officers. I pledge myself they shall stand the trial. I know your learning and ability as a judge, your purity as a man. You stood by the Union in the darkest hours of its fortunes. Stand by its Constitution now ! The judicial system of my State is the sun and centre of her form of government. Let it shed its light ! Let it not be shorn of its beams, remaining in a baleful, disastrous eclipse—an object of derision to its enemies and of melancholy pity to its friends ! Rather let the mailed hand of the warrior strike it from existence. Rather let a usurping Congress blot it out at one stroke. Let it go down, like the sun in our own Southern seas, in one unclouded blaze of living light ! Plunge us at once in the dark, moonless, rayless, starless night of anarchy and blood, upon which no dawn shall ever rise forever and ever. Then let eternity place its seal on the awful crime !"

The prosecution remained disarmed and paralyzed, but the issue was too momentous ; the prisoners were not discharged, nor remanded to the custody of the State authorities, but they were admitted to bail. It is a remarkable fact that soon after this trial Colonel Dowd was invited by the Government to accept the position of Assistant District-Attorney to aid in the prosecution of all other cases which might arise in the Northern District of Mississippi under the Civil Rights Bill and Enforcement Act.

" In my troth," said Queen Elizabeth, who happened to be in the Court of King's Bench when Sir Thomas Egerton, afterwards Lord Ellesmere, was arguing a case against the Crown, " he shall never plead against me again," and immediately caused him to be made one of her counsel. And the Government did not intend that Colonel Dowd should again appear in such a damnifying attitude to its cherished purposes. To his occupancy of this position his friends, and particularly his partner, Colonel Sale, were strenuously opposed, the latter declining to participate either in its duties or the large fees promised. But Colonel Dowd

contended that it was a province of his profession to defend thieves and murderers *for pay*, and he did not see why he should not do the same for a corrupt government; but whether he ever accepted the appointment or not, he never appeared before the Federal court in that capacity.

Colonel Dowd possessed a vivid and fruitful imagination, which often clothed his oratory in the garb of hyperbolism, yet his illustrations were so clear and his imagery so apt that the most overwrought coloring could not detract from the symmetry of his figures.

A few years before his death he was invited to address the Ladies' Memorial Association of Aberdeen. This was on Decoration Day, May 18th, 1874, an occasion which quickened the loftiest sentiments of his nature and called forth the most eloquent coruscations of his genius. After eloquently summing the sentiments and motives which actuated the Southern people throughout the mighty struggle, and depicting in terms of lightning flash the grandeur of patriotic martyrdom, and the glory achieved by the Southern soldiery, with a sublime gradation he turned from the dry bones of the dead but immortal past to the fresh and living present, to the budding prospects of the opening future, and compared the Union to the river St. Lawrence, "which, taking its rise in the Arctic regions, frozen by ice, retarded by hills, persistently forces its way until it widens into grand rivers, magnificent lakes, and inland seas, covered with the commerce of half a continent, and calmly floats past splendid cities, populous towns, green meadows, and supplies the cattle upon a thousand hills.

"Suddenly the great river reaches the rapids of Niagara. With the energy and power of the Gulf Stream, roaring like the ocean, furious and exasperated, it rushes to its doom over the terrible falls, shaking the solid rock-ribbed earth as it goes down; shivered into foam and spray, wave beating against wave, current against current, the mass plunges into the Devil's Hole, where, governed by no laws, filled with the wrecks of the dead past, wild, confused, and distracted, they break themselves in vain against the granite walls, and madly whirl and rave, round and round, in one dread maelstrom.

"Do the waters thus remain in this gulf of despair? No! by the eternal law, ever restless, ever moving, ever striving, they gradually find their way out. Again the grand river moves smoothly; again the wealth and commerce of half a continent floats on its surface and gladdens its shores. It glides through a thousand beautiful, lovely islands, and majestically enters the great ocean."

Colonel Dowd had but one fault, and one which often invades the purlieus of professional eminence. In his later days he became addicted to a rather excessive use of stimulants, not, however, in a spirit of debauchery or frivolous conviviality, but to quicken his overburdened physical energies, and to satisfy a craving for mental excitement which the monotonous surroundings of professional routine no longer afforded.

He was a kind, chivalrous, and generous man, with a heart dehiscent to every touch of charity, and a sympathy sensitive to every appeal of misfortune. In his private and social relations he was an affectionate husband, a kind father, and an everlasting friend.

# CHAPTER XII.

## THE BAR—EMINENT LAWYERS—1850–1880.

FULTON ANDERSON—GEORGE L. POTTER—WILLIAM A. LAKE—JAMES PHELAN—WILLIAM R. BARKSDALE—HARVEY W. WALTER.

## FULTON ANDERSON.

The subject of this sketch was born in Knoxville, Tennessee, on the 8th of March, 1820, and was educated at the University of Nashville, where he was graduated in 1836, at the early age of sixteen years. On completing his education he studied law under his father, Judge William E. Anderson, and at the age of nineteen obtained license to practice his profession.

In 1840 he removed to Mississippi and settled at Raymond, in Hinds County, where, during that year, he made his first public speech in advocacy of the election of Harrison and Tyler. So brilliant were the manifestations of his genius and so rapid his professional ascent, that he soon achieved a distinguished position at the bar, and in 1847 was chosen State's Attorney for the district composed of the counties of Hinds and Warren; but disliking the duties of a public prosecutor, he resigned the attorneyship in 1848, and resolved never again to prosecute for a fee.

In 1848 Mr. Anderson was married to Miss Mary Yerger, an elegant and accomplished lady, the oldest daughter of Hon. George S. Yerger, of Jackson, and in 1849 removed to that place and formed a copartnership with that distinguished gentleman. This was for many years, until the death of Mr. Yerger, one of the leading firms at the bar of the High Court of Mississippi.

As a lawyer Mr. Anderson was learned, diligent, and astute, and was one of two or three gentlemen whose respective claims to the meed of superiority at the bar of the High Court was a matter of contention among their friends. His knowledge of the law was thorough and comprehensive, and his powers of argument were of the highest order; indeed, it is doubtful whether a more logical mind than his could be found in the annals of the Mississippi bar. He was a gentleman of refined sentiments and a high sense of honor; stern and unyielding in the performance of duty, he was courteous and suave in his professional deportment and social etiquette.

During the war Mr. Anderson was elected to the Legislature, and was a candidate for a seat in the Confederate States Senate, but was defeated by Hon. J. W. C. Watson. In 1865 he was appointed by Governor Humphries, under a resolution of the Legislature, one of the counsel to aid in the defence of ex-President Davis, should he be brought to trial for treason by the United States Government, as was then threatened; and in the failure of the occurrence of that event, Mr. Anderson lost an opportunity for the exercise of his eloquence, his legal learning, and logical powers, which would have given him, no doubt, a world-wide renown.

He was in politics an ardent Whig, and was a co-operation candidate for the Convention of 1861, but was defeated. In January, 1861, he was sent as a commissioner on the part of Mississippi to solicit the concurrence and co-operation of Virginia in the measures of secession; and it was not for Thucydides in his elegant delineation of the events preceding the Peloponnesian war to describe a more accomplished embassy than that performed by Mr. Anderson to the capital of Virginia. His glowing summation of the wrongs already inflicted, as well as of those in process of perpetration, upon the rights of the Southern States, fell in stirring strains upon the proud ears of the patriotic gentry of the Old Dominion; and while they listened to his eloquent appeals to their ancestral renown, the statesmen of the old school recalled the glory of other days, and felt that the time had arrived for rekindling the fires of Bunker Hill and of Yorktown. The following is the full text of his speech deliv-

ered before the Convention of Virginia, in the city of Richmond, February 18th, 1861 :

" *Gentlemen of the Convention :* Honored by the government of Mississippi with her commission to invite your co-operation in the measures which she has been compelled to adopt for the vindication of her rights and her honor in the present perilous crisis of the country, I desire to express to you, in the name and behalf of her people, the sentiments of esteem and admiration which they in common with the whole Southern people entertain for the character and fame of this ancient and renowned commonwealth.

" Born under the same confederated government with yourselves, and participating in the common inheritance of constitutional liberty, in the achievement of which your ancestors played so distinguished a part, we take as much of pride and pleasure as you, her native sons, in the great achievements and still greater sacrifices which you have made in the cause of the common government, which has in the past united them to you ; and nothing which concerns your honor and dignity in the future can fail to enlist our deepest sympathies. In recurring to our past history we recognize the State of Virginia in the first great struggle for independence ; foremost not only in the vindication of her own rights, but in the assertion and defence of the endangered liberties of her sister colonies ; and by the eloquence of her orators and statesmen, as well as by the courage of her people, arousing the whole American people in resistance to British aggression. And when the common cause had been crowned with victory under her great warrior statesman, we recognize her also as the leader in that great work by which the emancipated colonies were united under a written constitution, which for the greater part of a century has been the source of unexampled progress in all that constitutes the greatness and happiness of nations ; nor do we forget that that progress has been due in a pre-eminent degree to the munificent generosity of Virginia in donating as a free gift to her country that vast territory north-west of the Ohio River which her arms alone had conquered, and which now constitutes the seat of empire, and, alas, too, the seat of that irresistible power which now

erects its haughty crest in defiance and hostility, and threatens the destruction of the honor and the prosperity of this great State.

"I desire also to say to you, gentlemen, that in being compelled to sever our connection with the Government which has hitherto united us, the hope which lies nearest to our hearts is that, at no distant day, we may be again joined in another Union, which shall spring into life under more favorable omens and with happier auspices than accompanied that which has passed away; and if, in the uncertain future which lies before us, that hope shall be destined to disappointment, it will be the source of enduring sorrow and regret to us that we can no more hail the glorious soil of Virginia as a part of our common country, nor her brave and generous people as our fellow-citizens.

"Fully participating in these sentiments, it is with pride and pleasure that I accepted the commission of my State for the purpose I have indicated. Though when I consider the gravity of the occasion, the high interests which are involved, and the influence which your deliberations are to have upon the destinies of present and future generations, I confess my regret that the cause on which I am come has not been intrusted to abler and worthier hands.

"In setting forth to you, gentlemen, the action of my State, and the causes which induced it, I shall be compelled to speak in terms of condemnation of a large portion of what has hitherto been our common country; but in doing so I wish to be understood as excepting from whatever terms of censure I may employ that large body of patriotic and conservative men of the northern section who have, in all our struggles, manfully defended the constitutional rights of our section. For them the people of my State have no cause of complaint, and whatever the future may bring forth, we shall ever remember their efforts in behalf of the Constitution and Union, as we received them from their ancestors and ours, with admiration and gratitude. Our grievances are not from them, but from the dominant faction of the North which has trampled them under foot and now strikes at us from the elevation it has obtained upon the prostrate bodies of our friends.

"I propose, gentlemen, in discharge of my mission to you, briefly to invite your attention to a review of the events which have transpired in Mississippi since the fatal day when that sectional Northern party triumphed over the Constitution and Union at the recent election, and afterwards to the causes which have induced the action of my State.

"On the 29th of November last the Legislature of Mississippi, by an unanimous vote, called a convention of her people, to take into consideration the existing relations between the Federal Government and herself, and to take such measures for the vindication of her sovereignty and the protection of her institutions as should appear to be demanded. At the same time a preamble setting forth the grievances of the Southern people, and a resolution, declaring that the secession of every aggrieved State was the proper remedy, was adopted by a vote almost amounting to unanimity. The last clauses of the preamble and resolution are as follows:

"'*Whereas*, They (the people of the non-slaveholding States) have elected a majority of electors for President and Vice-President, on the ground that there exists an irreconcilable conflict between the two sections of the confederacy, in reference to their respective systems of labor, and, in pursuance of their hostility to us and our institutions, have thus declared to the civilized world that the powers of the Government are to be used for the dishonor and overthrow of the southern section of this great confederacy. Therefore, be it

"'*Resolved*, By the Legislature of the State of Mississippi, that, in the opinion of those who constitute said Legislature, the secession of each aggrieved State is the proper remedy for their injuries.'

"On the day fixed for the meeting of the convention, that body convened in Jackson, and on the 9th of January, 1861, proceeded to the adoption of an ordinance of secession from the Federal Union, by which the State of Mississippi withdrew from the Federal Government the powers theretofore confided to it, and assumed an independent position among the powers of the earth, determined thenceforth to hold the people of the non-slaveholding section enemies in war, and in peace friends. But

at the same time, and by the same ordinance, it was provided 'that the State of Mississippi hereby gives her consent to form a Federal Union with such of the States as may have seceded, or may secede, from the Union of the United States of America, upon the basis of the present Constitution of the United States.'

"This action of the Convention of Mississippi, gentlemen, was the inevitable result of the position which she, with other slaveholding States, had already taken, in view of the anticipated result of the recent Presidential election, and must have been foreseen by every intelligent observer of the progress of events.

"As early as the 10th of February, 1860, her Legislature had, with the general approbation of her people, adopted the following resolution:

"'*Resolved*, That the election of a President of the United States by the votes of one section of the Union only, on the ground that there exists an irrepressible conflict between the two sections in reference to their respective systems of labor, and with an avowed purpose of hostility to the institution of slavery, as it exists in the Southern States, and as recognized in the compact of the Union, would so threaten a destruction of the ends for which the Constitution was formed as to justify the slaveholding States in taking counsel together for their separate protection and safety.'

"Thus was the ground taken, not only by Mississippi, but by other slaveholding States, in view of the then threatened purpose of a party founded upon the idea of unrelenting and eternal hostility to the institution of slavery, to take possession of the Government and use it to our destruction. It cannot, therefore, be pretended that the Northern people did not have ample warning of the disastrous and fatal consequences that would follow the success of that party in the election; and impartial history will emblazon it to future generations, that it was their folly, their recklessness, and their ambition, not ours, which shattered into pieces this great confederated Government, and destroyed this great temple of constitutional liberty which their ancestors and ours erected, in the hope that their descendants might together worship beneath its roof as long as time would last.

"But, in defiance of the warning thus given, and of the evidences accumulated from a thousand other sources, that the Southern people would never submit to the degradation implied in the result of such an election, that sectional party, bounded by a geographical line which excluded it from the possibility of obtaining a single electoral vote in Southern States, avowing for its sentiment implacable hatred to us, and for its policy the destruction of our institutions, appealing to Northern prejudice, Northern passions, Northern ambition, and Northern hatred of us, for success, and thus practically disfranchising the whole body of the Southern people, proceeded to the nomination of a candidate for the Presidency, who, though not the most conspicuous personage in its ranks, was yet the truest representative of its destructive principles.

"The steps by which it proposes to effect its purposes—the ultimate extinction of slavery and the degradation of the Southern people—are too familiar to require more than a passing allusion from me.

"Under the false pretence of restoring the Government to the original principles of its founders, but in defiance and contempt of those principles, it avowed its purpose to take possession of every department of power—executive, legislative, and judicial—to employ them in hostility to our institutions. By a corrupt exercise of the power of appointment to office it proposed to pervert the judicial power from its true end and purpose—that of defending and preserving the Constitution—to be the willing instrument of its purposes of wrong and oppression. In the mean time it proposed to disregard the decisions of that august tribunal, and, by the exertion of barefaced power, to exclude slavery from the public territory, the common property of all the States, and to abolish the internal slave trade between the States acknowledging the legality of that institution.

"It proposed, further, to abolish slavery in the District of Columbia, and in all places within the territory of the several States, subject under the Constitution to the jurisdiction of Congress, and to refuse hereafter, under all circumstances, admission into the Union of any State with a constitution recognizing the institution of slavery.

"Having thus placed the institution of slavery, upon which rests not only the whole wealth of the Southern people, but their very social and political existence, under the condemnation of a government established for the common benefit, it proposed in the future to encourage immigration into the public territory by giving the public lands to immigrant settlers, so as, within a brief time, to bring into the Union free States enough to enable it to abolish slavery within the States themselves.

"I have but stated generally the outline and the general programme of the party to which I allude, without entering into particular details or endeavoring to specify the various forms of attack which have been devised and suggested by the leaders of that party upon our institutions.

"That this general statement of its purpose is a truthful one no intelligent observer of events will for a moment deny; but the general view and purpose of the party has been sufficiently developed by the President-elect.

"'It is my opinion,' says Mr. Lincoln, 'that the slavery agitation will not cease until a crisis shall have been reached and passed. A house divided against itself cannot stand. I believe this Government cannot endure permanently half slave and half free. I do not expect the house to fall, but I expect it to cease to be divided. It will become all one thing or another. Either the opponents of slavery will arrest its further spread and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction, or its advocates will push it forward until it shall become alike lawful in all the States, old as well as new, North as well as South.'

"The party thus organized on the principle of hostility to our fundamental institutions, and upon the avowed policy of their destruction, with a candidate thus representing that principle and policy, has succeeded in the Presidential election, by obtaining a large majority of the votes of the people of the non-slaveholding States, and on the 4th of March next would, unless prevented, have taken possession of the power and patronage of our common Government, to wield them to our destruction. In contemptuous disregard of the principle on which that Government was founded, and received our assent,

to insure domestic tranquillity, promote the general welfare, and within the limit of its constitutional power to exercise a fostering and paternal care over every interest of every section, it was to become our foe and our oppressor, and never to pause in its career of hostility and oppression until our dearest rights, as well as our honor, were crushed beneath its iron heel.

"We, the descendants of the leaders of that illustrious race of men who achieved our independence and established our institutions, were to become a degraded and a subject class under that Government which our fathers created to secure the equality of all the States—to bend our necks to the yoke which a false fanaticism had prepared for them, to hold our rights and our property at the sufferance of our foes, and to accept whatever they might choose to leave as a free gift at the hands of an irrepressible power, and not as the measure of our constitutional rights.

"All this, gentlemen, we were expected to submit to, under the fond illusion that at some future day, when our enemies had us in their power, they would relent in their hostility; that fanaticism would pause in its career without having accomplished its purpose; that the spirit of oppression would be exorcised, and in the hour of its triumph would drop its weapons from its hands and cease to wound its victim. We were expected, in the language of your own inspired orator, to 'indulge in the fond illusions of hope, to shut our eyes to the painful truth, and listen to the song of that siren until it transformed us into beasts.'

"But we in the State of Mississippi are no longer under that illusion. Hope has died in our hearts. It received its death-blow at the fatal ballot-box in November last, and the song of the siren no longer sounds in our ears. We have thought long and maturely upon this subject, and we have made up our minds as to the course we should adopt. We ask no compromise, and want none. We know that we should not get it if we were base enough to desire it, and we have made the irrevocable resolve to take our interests into our own keeping.

"I have already said that twelve months since the State of Mississippi, in connection with other slaveholding States, had taken a position in anticipation of the result of the recent Presi-

dential election, from which they could not recede if they were base enough to desire it. I shall be pardoned by you, I trust, for adding that an event of then recent occurrence, which deeply concerned the honor and dignity of Virginia, exercised a controlling influence in consolidating the Southern mind on this subject. When the exasperation was at the highest, which had been caused by the long and weary struggle which the Southern people had been compelled to make in defence of their institutions, the daring outrage on your soil to which I allude was perpetrated.

"This State, relying on the faith of constitutional obligations and of those friendly relations which they were created to uphold and maintain, unconscious herself of any sentiment less noble than that of unwavering loyalty to her constitutional obligations, and therefore wholly unsuspicious of any treasonable design against her own peace and welfare, was, in a moment of fancied repose, in a time of profound peace, to her own amazement and that of the whole Southern people, made the scene of a foray by a band of conspirators and traitors from the Northern States, whose purpose was to light up the fires of a servile insurrection, and to give your dwellings to the torch of the incendiary and your wives and children to the knives of assassins. The disgraceful attempt, it is true, ended in ignominious failure. True that your slaves proved loyal, and by a prompt execution of your laws you vindicated your dignity and exacted from the wretched criminals the just forfeiture of their lives. But the event had, nevertheless, a terrible significance in the minds of the Southern people. It was justly considered as the necessary and logical result of the principles boldly and recklessly avowed by the sectional party which was then grasping at the reins of government, and which is now about to be inaugurated into power.

"Let it not be supposed that I refer to this disgraceful event with a desire to stir up a spirit of hostility or revenge, or to reawaken those sentiments of just indignation which the fact is so well calculated to excite. I refer to it as a necessary and legitimate result of the irrepressible conflict which has been proclaimed, of which the President-elect gave a true exposition

when he said, 'There is a judgment and a conscience at the North against slavery which must find an outlet either through the peaceful channel of the ballot-box or in the multiplication of John Brown raids.' I refer to it as a warning to the people of the Southern States, and to you, the people of Virginia, of what they and you are to expect in the future when that party, whose principles thus give encouragement, aid, and comfort, to felons and traitors, shall have firmly established its dominion over you.

"These are some of the causes, gentlemen, which have at last convinced the people of Mississippi that the hour has arrived when, if the South would maintain her honor, she must take her own destiny into her own hands; but let it not be supposed that they have not always felt a strong attachment to the Union of the Constitution, provided that instrument could be administered in the spirit in which it was created. That form of government, on the contrary, is dear to our hearts, and its necessity to them and their posterity has received the sanction of their judgment. Loving it not wisely but too well, they have clung to it long after its obligations were abandoned by those who were the chief recipients of its benefits, under the fond illusion that a returning sense of justice and a restoration of fraternal relations formerly existing would secure to them their rights. They long and vainly hoped that the time would again return when each and every section of the confederacy would recognize the rights and interest of all, and that we might in harmony with each other have continued to rejoice over what had been achieved of glory and prosperity in the past, and to look forward with united hope to the bright and glorious prospect which an observance of the principles of the Constitution promised in the future. But, alas, how has that hope been disappointed; how has that illusion been dispelled!

"Could we think that the crisis which is now upon us was but a temporary ebullition of temper in one section of the country which would in a brief time subside, we might even yet believe that all was not lost, and that we might yet rest securely under the shadow of the Constitution. But the stern truth of history, if we accept its teachings, forbids us such reflections.

It is not to be denied that the sentiment of hatred to our institutions in the northern section of the confederacy is the slow and mature growth of many years of false teaching, and that as we have receded farther and farther from the earlier and purer days of the Republic, and from the memory of associated toils and perils in the common cause which once united us, that sentiment of hatred has been fanned from a small spark into a mighty conflagration, whose inextinguishable and devouring flames are reducing our empire into ashes.

"Ere yet that generation which achieved our liberty had passed entirely from the scene of action it manifested itself in the Missouri controversy. Then were heard the first sounds of that fatal strife which has raged, with occasional intermissions, down to this hour. And so ominous was it of future disaster, even in its origin, that it filled even the sedate soul of Mr. Jefferson with alarm; he did not hesitate to pronounce it, even then, as the death-knell of the Union, and in mournful and memorable words to congratulate himself that he should not survive to witness the calamities he predicted. Said he:

"'This momentous question, like a fire-bell in the night, awakened and filled me with terror. I considered it at once the death-knell of the Union. It is hushed, indeed, for the present; but that is only a reprieve, not a final sentence. A geographical line, coinciding with a marked principle, moral and political, once concurred in and held up to the passions of men, will never be obliterated, and every new irritation will mark it deeper, until it will kindle such mutual and mortal hatred as to render separation preferable to eternal discord.

"'I regret that I am now to die in the belief that the useless sacrifice of themselves, by the generation of 1776, to acquire self-government and happiness for their country, is to be thrown away by the unwise and unworthy passions of their sons, and that my only consolation is to be that I live not to weep over it.'

"But so far were the Northern people from being warned by these sad, prophetic words, that at each renewal of the struggle the sentiment of hostility has acquired additional strength and intensity. The passions enlisted in it have become more bitter,

the disregard of constitutional obligations more marked, and the purpose to destroy our institutions more fixed and definite.

"An infidel fanaticism, crying out for a higher law than that of the Constitution and a holier Bible than that of the Christian has been enlisted in the strife, and in every form in which the opinions of a people can be fixed and their sentiments perverted. In the school-room, the pulpit, on the rostrum, in the lecture-room, and in the halls of legislation, hatred and contempt of us and our institutions, and of the Constitution which protects them, have been inculcated upon the present generation of Northern people. Above all, they have been taught to believe that we are a race inferior to them in morality and civilization, and that they are engaged in a holy crusade for our benefit in seeking the destruction of that institution which they consider the chief impediment to our advance, but which we, relying on sacred and profane history for our belief in its morality, believe lies at the very foundation of our social and political fabric, and constitutes their surest support.

"This, gentlemen, is indeed an irrepressible conflict, which we cannot shrink from if we would ; and though the President-elect may congratulate himself that the crisis is at hand which he predicted, we, if we are true to ourselves, will make it fruitful of good by ending forever the fatal struggle, and placing our institutions beyond the reach of further hostility.

"I know not what may be your views of this subject, nor what your purpose in this crisis ; but I have already told you what the people of Mississippi have resolved on, and to that determination, you may rely upon it, they will adhere through every extremity of prosperous or adverse fortune. They, like you, are the descendants of a revolutionary race, which for far less cause raised the banner of resistance against a far mightier power, and never lowered it until that victory which the god of battles gives to brave men in a just cause had crowned their efforts and established their independence ; and they have, like them, decided that the time has arrived to trust for the safety of their honor and rights only to their own strong arms and stout hearts rather than submit to placing those priceless blessings in the keeping of their inveterate foes.

"I shall enter into no discussion of the right of secession, whether it be peaceful and constitutional, or violent and revolutionary. If decided at all, that question must in the nature of things be decided first by those who would force us back into a union with them, which we have repudiated, and when they shall have made up their minds on that subject, it will remain for us to join the issue and accept the consequences, be they peaceful or bloody. We shall do all in our power to avoid a hostile collision with those who were once our brothers, though now divided from us by an impassable gulf; we wish them no harm, and could our prayers avail them we would freely offer them, that in their future destiny they may have that prosperity, liberty, and peace which we intend to seek for ourselves under a new organization. All good men, too, will pray that that Providence which presides over the destinies of nations and shapes their ends, rough-hew them as they will, will so ordain that the friends of liberty throughout the world may not have cause to mourn over the folly and madness and wickedness of an effort by arms on this continent to subject a whole people, united in the vindication of their rights, and resolved to die in their defence.

"But if it must be so, and we are compelled to take up arms, we trust we shall know how to bear ourselves as freemen engaged in a struggle for their dearest rights. We have learned the lesson how to do so from the history of your own noble commonwealth, and we will attempt, at least, to profit by the glorious example.

"The conviction of the justice of their cause will be a tower of strength in the hour of battle, and inspire the hearts of the Southern people like the sounds of that divine music which, in the words of the great poet,

> "'. . . cheered the hearts of heroes old,
> Arming to battle; and instead of rage,
> Deliberate valor breathed firm and unmoved
> By dread of death to fight or foul retreat.'

"And when that hour comes, we know, too, where Virginia will stand. Her banner will float proudly 'over the perilous

edge of battle,' wherever it rages, and the blood of her sons will enrich every field where Southern men strike for their rights and their honors.

"Having thus stated the action of my State, and the causes which induced it, I should probably best consult the proprieties of the occasion by adding nothing to what I have said. I trust, however, I shall be pardoned for offering one or two suggestions for your consideration. The fundamental idea which has influenced the action of the seceding States is the demonstrated necessity that the Southern people should take their interest and their honor into their own keeping, and thus rescue them from the power of an avowedly hostile government. It is not that they are opposed to a union of the confederated States. Such a form of government is not only dear to their hearts, but its value and necessity to them and their posterity receives the recognition and approval of their judgment. It is no fault of theirs that the Union, as it recently existed, has ceased to be practicable or desirable. The Southern people may well recur with pride to the history of their connection with that Government. Well may they ask when have they, as States or individuals, proved faithless to the obligations it imposed? In what point have they fallen short of the full measure of duty and comity to their sister States? What indulgence have they not shown to the insulting prejudices and unreasoning fanaticism of the other section? What sacrifices of blood and treasure have they not made in the common cause, and what efforts to bring back the harmony which, in the language of one of her most eloquent sons, reigned in those days when Massachusetts summoned Washington to lead the armies of New England, and when Virginia and Carolina sent supplies of corn and rice to their famishing brethren in Boston?

"But such a form of government being demonstrated to be impracticable with the Northern people, all that is left us is the creation of a great and powerful Southern Union, composed of States inhabited by homogeneous populations, and having a common interest, common sympathies, common hopes, and a common destiny.

"This is the inevitable destiny of the Southern people, and this destiny Virginia holds in her hands. By uniting herself to her

sisters of the South who are already in the field, she will make that a peaceful revolution which may otherwise be violent and bloody. At the sound of her trumpet in the ranks of the Southern States, 'grim-visaged war will smooth his wrinkled front,' peace and prosperity will again smile upon the country, and we shall hear no more threats of coercion against sovereign States asserting their independence. The Southern people, under your lead, will again be united, and liberty, prosperity, and power, in happy union, will take up their abode in the great Southern Republic, to which we may safely intrust our destinies. These are the noble gifts which Virginia can again confer on the country, by prompt and decided action at the present.

"In conclusion, gentlemen, let me renew to you the invitation of my State and people to unite and co-operate with your Southern sisters who are already in the field in defence of their rights. We invite you to come out from the house of our enemies, and take a proud position in that of your friends and kindred. Come, and be received as an older brother, whose counsels will guide our action and whose leadership we will willingly follow. Come, and give us the aid of your advice in counsel, and your arm in battle, and be assured that when you do come, as we know you will do at no distant day, the signal of your move will send a thrill of joy vibrating through every Southern heart from the Rio Grande to the Atlantic, and a shout of joyous congratulation will go up which will shake the continent from its centre to its circumference."

After perusing this address the reader will not thank the historian of this work for an expression of his opinion of Mr. Anderson's oratory or patriotism. Suffice it to say, that his elocution was cultivated and pleasing, and his manners as an orator graceful and engaging. But, like all of our leading men and eminent patriots, who had thrown their minds, their hearts, and their hopes into the issue of the great struggle, the result was to Mr. Anderson overwhelming and irremediable. The gloom that hung over his country, the misfortunes that bore down his people, seemed to add the weight of age to his meridian years, and he passed from the scene amid the darkness that thickens on the brow of approaching dawn. He died at his residence, in Jackson, on the 27th of December, 1874.

## GEORGE L. POTTER.

George Lemuel Potter, long a distinguished lawyer at the bar of Mississippi, was born in the city of New Haven, Connecticut, on the 10th of November, 1812. His early advantages were liberal, and after a thorough preparation in the best schools of his native city he was sent to Yale College, from which he was graduated in the twenty-first year of his age. He then studied law, and, having obtained his license, emigrated to Mississippi in 1835, and located in the city of Natchez, where he pursued his profession until the year 1840, when he removed to the town of Clinton, in Hinds County, and there formed a copartnership with Mr. H. E. Van Winkle. He remained in Clinton about three years, and then removed to Jackson, where he soon took rank among the first lawyers who practised at the bar of the High Court. For thirty-five years there was scarcely a lawyer in the State who appeared more frequently before that bar, and the reported decisions during that time abound with arguments made by him upon the most important questions, and which display a profoundness of research, powers of analysis, logical acumen, and a brilliancy of success that would perpetuate the fame of any jurist at any bar and in any age.

His intellect was subtle, penetrating, and profound, and was thoroughly trained and disciplined by severe, constant, and intense exercise, while his capacity for mental labor seemed to be of an exhaustless measure. He rarely spent an idle hour, but was ever busy either in the investigation of some abstruse legal question which was involved in his practice, or presented to his mind by his powers of analogy ; or he was actively engaged in the promotion of some scheme to advance the welfare of the community.

The professional acquirements of Mr. Potter were of the highest order, and he was a lawyer of great learning and ability ; the qualities of his mind were singularly adapted to the embracement of those tenuous and recondite features of the profes-

sion which constitute the test of superiority and are required to fill the measure of eminence. His intellect spread itself like a "diffusive touch" throughout every part of a subject, gathered up the ingredients of truth, and constructed a chain between cause and effect of which his perception traversed and inspected every link. While his distinctions were, sometimes, apparently without a characterizing difference, and his theories too refined and attenuated for ordinary vision, they were found when assaulted to be cables of reason which moored his positions to fundamental principles and unquestionable truths.

His mind was peculiarly practical. He had no taste for the specious and ornamental, and rarely indulged in rhetorical figures or flights of imagination. He gave no thought to his manner of oratory, and no attention to his style of elocution ; but with his mind centred upon the matter of his discourse and the pith of his argument, his eloquence gushed, fresh and pure, from the fountains of conviction, and his logic roamed free and untrammelled through the field of thought, guided only by the light of perspicuity and the goal of truth.

His features and habits partook of the character of his mind. The former were clear-cut and strikingly prominent, while his homely attire and unkempt appearance gave an enigmatical air to the man, which, while in keeping with his meekness and simplicity, presented an eccentric contrast with the brilliancy and intellectual flashes of his conversation.

But as the source of these outward manifestations of his greatness, he erected a pure structure of the inner man. He possessed a perfect mastery over himself, maintained a severe moral regimen, and cultivated a system of strict self-abnegation, to which his actions conformed more and more as he advanced in years. So striking were these features that they impressed themselves upon the attention of all who came within the reach of his influence, and caused them to contemplate more seriously the problem of life and the proper way in which the great battle should be fought.

In the prime of life he had amassed a store of resources, and acquired a professional reputation which gave him the command of fortune ; but the acquisition of wealth did not enter the cur-

riculum of his aims, and formed no part of his ambition. He performed a large amount of charitable and unrecompensed labor, and seemed to be satisfied with a bare sufficiency of means for the support of his family. He made no effort to gain popularity, repelled the overtures of official distinction, and gathered scantily from the riches which an ample professional patronage placed within his reach.

But the curious gaze which such an exceptional character would have attracted was diverted by his great talents and attainments, and his eccentricities were lost in the admiration of his exalted virtues. To one not familiar with these the character of Mr. Potter would have been, indeed, an unsolvable enigma.

But the strangest thing connected with the character of this remarkable man was that his great fondness for severe and intense intellectual labor, his rigid abstinence, and apparent deficiency of taste for the ordinary pleasures and gratifications of life, were by no means associated with solitary habits; nor did he

> "All the livelong day
> Consume in meditation deep, recluse
> From human converse."

On the contrary, he sought the society of men, delighted in animated conversation, and cherished the warmest friendships and the keenest sympathies. He was uniformly calm and cheerful, and maintained on all occasions an imperturbable equanimity. His life was blameless, and abounded in good deeds. He labored earnestly for the public weal, with no expectation or desire of reward. His charity flowed freely, and no labor was too severe for him in the performance of a kindly act or in gratifying the wishes of a friend.

Mr. Justice Chalmers, in his response to the presentation of the tribute of the bar of the Supreme Court to the memory of Mr. Potter, related some striking instances of this character. He said:

"Twenty-one years ago, while a law student in this city in the office of the Attorney-General of the State, I was directed by my preceptor to prepare a brief in the case of Mask *vs.*

The State, reported in 32d Miss. R. Pursuing my investigations for this purpose in the State Library, I discovered that one of the questions involved was of first impression in this court. Mr. Potter, already in the meridian of his fame as a lawyer, happened to be in the library, and I took the liberty of calling his attention to the question. I shall never forget my surprise at the cheerfulness with which he abandoned his own work and the kindness with which he pointed out to me the conflicting decisions in other States, and explained the reasons upon which they were based. It remains in my memory as my first distinct recollection of him, and my last is of a similar character. A few days before his death I incidentally mentioned to him in the same library a question of some difficulty which I had under consideration as a member of this court, and I was astonished the next day by his coming to me with a sheet of paper covered with citations of authorities upon the point. Trivial as these circumstances are, they illustrate that kindness of heart, that abnegation of self, that earnest sympathy for the troubles of others, which we all knew, and which, no doubt, are more precious at that Supreme Bar before which his immortal spirit stands to-day than all the wealth of learning and of genius which he so often displayed before this.

"It has been said that the bar instructs the bench no less than it is instructed by it. Never did we realize this fact more sensibly than in listening to the arguments or perusing the briefs of our deceased brother. Nothing that learning, or labor, or ingenuity could suggest was left unsaid; and if sometimes the very acuteness and subtlety of his intellect misled him, it was as difficult to detect the fallacy of his reasoning as it was to resist the power of his logic."

The death of Mr. Potter, which occurred on the 6th of February, was shockingly sudden and unexpected. He had left his residence in Jackson on the evening before to attend the chancery court of a neighboring county, in which he was engaged in an important case. He had finished his argument and seated himself at a table in the bar; he was engaged in writing, but before the document was finished he was suddenly stricken with apoplexy, and died immediately. It is somewhat a remarkable

coincidence that the only law partner he ever had, Mr. Van Winkle, met with the same sudden death, who also was seized with apoplexy while standing in the vestibule of the Capitol, and, like Mr. Potter, died almost without a struggle.

The life of Mr. Potter was a beautiful commentary upon the calm and peaceful assurances of Christianity. He walked strictly in its paths, and plucked every joy of its promises. The last time his friends beheld him he was sitting in his accustomed pew, from which he proceeded to the train that bore him to the scene of his death.

The following beautiful tribute was paid to his memory by the bar of the Supreme Court, and which was accompanied by the usual resolutions :

" Judge George Lemuel Potter, the great lawyer, the useful and public-spirited citizen, the humble and devout Christian, the devoted and unselfish friend, has been called suddenly from the scene of his earthly labor. It is fit that his surviving brethren of the bar should pay this tribute to his memory, and testify their appreciation of his worth.

" For more than thirty-five years he has practised at the bar of this court. The reports of its decisions contain many evidences of his ability as a lawyer. Those of us who have heard him at the bar can bear testimony that his great fame as a jurist was not undeserved. He was, indeed, one of the brightest luminaries of our profession, distinguished by his rare intellectual endowments and his vast legal acquirements.

" Yet, learned and great as he was, there was nothing in his manner, nor in his intercourse with the bench and bar, which indicated that he was conscious of a superiority over others ; he was modest, gentle, and ever mindful of the rights and feelings of others.

" He maintained his side in argumentation with the skill of a great dialectician supported by vast and varied learning. He enjoyed his victories at the bar with moderation, and submitted to defeat without complaint. His capacity for labor was extraordinary, and his industry almost without a parallel.

" By the gentleness of his manners and the truthfulness and sincerity of his nature he won the esteem and love of us all.

He was a sincere and devoted Christian, illustrating in his daily intercourse with his fellow-men the spirit of peace and love of his Divine Master. He was frank and candid, without brusqueness; he was liberal in praise when commendation was due, yet was no flatterer; he was foremost in every good work; he was so full of kindness for his fellow-man, so ready and prompt to render any assistance in his power to whomsoever might ask or need it, that it may with truth be said that he passed the greater portion of his life in unrecompensed labor for others. Few men have deserved so well of the community in which they lived, and few, when death has called them hence, have been so mourned. His death is a great public loss, and it inflicts a deep wound on us, his surviving brethren."

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## WILLIAM A. LAKE.

William A. Lake, long a prominent member of the bar of Mississippi, was born in Dorchester County, Maryland, in the year 1808. His educational advantages were ample, and he was admitted to the bar at the age of twenty-one. Two years later he was elected to a seat in the Legislature of Maryland, and at the expiration of his term, in 1834, he removed to Mississippi and resumed the practice of law in the city of Vicksburg, at first in copartnership with Mr. William H. Hurst, and afterwards with Judge J. S. Yerger. He rose rapidly to distinction in his new home, and wrought his way to a merited position among the most eminent members of his profession.

But while he was learned as a lawyer and successful as an advocate, his varied accomplishments fitted him peculiarly for the position of a popular leader, and he was several times called to represent Warren County in the Legislature of the State, first in the lower House and then in the Senate.

He possessed in an eminent degree the qualities that gain the confidence of the public and insure popularity with the people. He was an eloquent speaker, enthusiastic in his partyism, bold,

frank, and fearless in the avowal of his principles, yet courteous and gentle in his opposition. His character was a blended model of sensitiveness, honor, and magnanimity. His personal popularity was consequently great, and he was chosen in 1856 to represent the Fourth Mississippi district in the Congress of the United States, in which his course was marked with a fidelity that reflected credit upon himself, and with a dignity and ability that gave honor to his section and constituency. In 1861 he was a candidate for a seat in the Confederate Congress, and in consequence of some personalities or misunderstandings, growing out of the heated canvass, he was challenged by his opponent, Chambers, and fell upon the field of honor.

His death was greatly lamented, especially by the community in which he lived, and to which his useful talents and social virtues had endeared him to an extent equalled only by the pride which it felt in his genius.

Mr. Lake was gifted with intellectual powers of a high order, but his eminence at the bar was not alone the result of superior talents: it was due in a great measure to his assiduity, his capacity for labor, and his close attention to all the details of the profession. He omitted no test of patience, no tedium of investigation, and no item of labor necessary to advance the cause of his clients or promote the attainment of their rights.

His spirited sense of honor and unswerving integrity commanded respect and inspired confidence; his polished and urbane manners attracted the good-will of all who came in contact with him, while his cultured and refined oratory gave him a power of suasion which the sternest defiance could not wholly withstand. He was also an able and forcible logician, and, whether in the forum or the halls of legislation, proved himself an antagonist worthy of the keenest steel.

His accomplishments were varied and versatile, and his personal attributes were no less conspicuous for their excellence than his professional attainments. His impulses, though vehement, were kind and gentle, and his motives were pure and unselfish. In his family he was kind and patriarchal, and in all his intercourse with his fellow-men he was frank, noble, and scrupulous in the observance of all the forms of courtesy.

His public honors were indisputably deserved, honestly gained, and worthily worn; and, as an eminent divine said of Alexander Hamilton, "He stood upon an eminence, and glory covered him; from that height he has fallen—suddenly, forever fallen." Mr. Lake stood upon an eminence in Mississippi, and his glory was the respect, the honor, and the admiration in which he was held by his fellow-citizens.

While he was quick and resolute in maintaining his own honor and dignity, he was not revengeful, nor arrogant or overbearing in his demeanor. On the night before his death he wrote to his wife, "My conscience approves my conduct in this matter, and however it may result, I feel that I shall not reproach myself. I have many friends to whom I am devotedly attached; and although I have some enemies, I have never intentionally harmed them." And he declared to a friend upon the field that it was neither his intention nor desire to kill his antagonist. But his magnanimity was no defence against the fatal missile. He fell, and the bar was deprived of one of its most distinguished members, society one of its brightest ornaments, and the State of Mississippi one of its most patriotic and useful citizens.



James Phelan.

# JAMES PHELAN.

The father of James Phelan was a native of Ireland, and was a descendant of one of the ancient families of that country. Being well educated, and possessed of an ample fortune, he was ambitious of filling a higher sphere than he could hope to enjoy under the system of political exclusion maintained against Catholics, at that time, in his native country, and in 1793 emigrated to America. He resided for many years in New York and New Jersey, and during that time was an officer of the First United States Bank in New York, the Bank of Manhattan, and subsequently cashier of the Bank of New Brunswick in New Jersey. Having lost his property by an ill-advised land speculation in New Brunswick, he determined to seek the reparation of his fortune in the South, and removed to Huntsville, in Alabama, about the time of the admission of that State into the Union.

Here the subject of this sketch was born, on the 20th of November, 1820. His father, actuated, perhaps, by notions of primogeniture imbibed in his native country, bestowed all the means he could afford upon the classical education of his oldest son, while the subject of this sketch enjoyed but few educational advantages; and, when about the age of fourteen years, with that self-reliance and spirit of independence which characterized him through life, he sought employment as an apprentice to the printer's art, in the office of the Huntsville *Democrat*. But so brilliant was his genius, and so conspicuous were his native talents, that he was soon enabled to exchange the stick for the quill, and his editorials attracted the attention of the leading men in the State. In consequence of his political acumen, and the incisive vigor of his editorials, he was afterwards called by the unanimous voice of the party magnates to take charge of the editorial columns of *The Flag of the Union*, the central organ of the Democratic party, published at Tuscaloosa, the capital

of the State. Through the columns of this journal he exercised, for many years, a controlling influence in the politics of Alabama, and in 1843 was elected State Printer.

In this double capacity his energy and business qualifications abetted the development of his talents, and having acquired a competency he determined to devote his future career to the law, and entered the office of his older brother, Judge John D. Phelan, at Marion, Alabama, where he soon prepared himself for the profession, and was admitted to the bar of the Supreme Court of his native State in 1846. He then returned to Huntsville, where he began his professional career, and in 1847 married Miss Eliza Moore, of that place—a lady noted for her accomplishments, and afterwards for her conjugal devotion.

In 1849 Mr. Phelan removed to Aberdeen, Mississippi, where he soon achieved a distinction of the first rank in his profession, and in 1854 formed a copartnership with John B. Sale. This firm was justly regarded as one of the ablest in the State, and the association continued until the outbreak of the civil war.

Possessed of an ardent temperament and an inherited hatred of oppression, he espoused the Southern cause with all the warmth and vigor of his nature. In every heated campaign his voice had been heard in thrilling notes in defence of Democratic principles and in the advocacy of *States rights;* and when the great issue, now fixed and defined, was arraigned before the tribunal of the sword, no one was more ready than he to place his life as an offering in the scale ; but his talents designated him for other duties than those of the field. In 1860 he was elected to the State Senate, and in the first organization of the Confederate Government was chosen one of the Senators of Mississippi in the Confederate States Congress. He had never sought office, but, preferring the quiet of private life, had given to his profession that undivided allegiance which Lord Eldon said it demanded. But the vast importance and the great responsibility which now attached to the counsels of the young nation, upon whose wisdom hung the mightiest issues that ever freighted the thoughts of men, opened to Mr. Phelan an illimitable field for his patriotic efforts, and one to which his talents were peculiarly adapted. On this field he met men who had been long trained

in the two Houses of the United States Congress, and others distinguished at home for their learning and ability. He was arrayed against men who had held the first rank as politicians and popular orators both in Congress and in the State governments, and one less dauntless might have shunned a controversy with men of such overwhelming reputation as Yancey, Clay, Barnwell, and Wigfall; but Mr. Phelan at once took his place in the front rank, and his speeches exhibited a profundity of research and vigor in debate which have rarely been equalled by the best-trained parliamentarians. He was devoted to truth, and the supremacy of law, as the best shield of liberty. It was not, therefore, with him to question whether he would fare well or ill in such contests, but whether the country would be benefited or injured by the measures which were under debate. In illustration of this, some extracts are appended to this sketch, from a speech he made in the Confederate States Senate in opposition to an amendment proposing to repeal the section of the Judiciary Act which gave appellate jurisdiction to the Supreme Court in certain cases originating in the State courts. At this period there existed a great prejudice against the recognition of any power not subordinate to that of the State, and the amendment seemed about to pass without opposition when Mr. Phelan arose, the unexpected defender of the gate, and presented himself an untried but full-armed champion in the defence of what he believed to be a vital interest about to be crushed under popular error.

After the close of Mr. Phelan's senatorial career he was appointed judge of a military court, and continued to discharge, in an able manner, the duties of that station until the close of the war. In every position, whether as senator, judge, or citizen, he gave an earnest and unswerving support to the administration of Mr. Davis, justly considering that while carping criticism might weaken the defence of the country, it could not possibly strengthen the arms which were upholding its banner. Between him and Mr. Davis existed a warm personal friendship and the freest interchange of opinion; indeed, there was no man to whom the Confederate President more fully revealed his purposes and motives. It is not supposable, however, that a

man of such marked characteristics as Mr. Phelan would uniformly agree with any one on such complex questions as were involved in the war and the policy of the new government; but whatever may have been the measures in regard to which he disagreed with Mr. Davis, discussion usually brought them into concurrence, and the trials of the long and wasting war left them only closer friends than before.

Judge Phelan was always an advocate of the strongest measures which would tend to increase the means of our defence. With him all the property and all the men of the Confederacy were due to the exigencies of the struggle, and in January, 1863, he introduced a bill in the Confederate States Senate providing for the impressment and appropriation to the public defence of all cotton within the Confederacy, which was referred to a special committee, and was reported by it, after some amendments, with the recommendation that it should pass. The object of this measure was twofold—to prevent the cotton remaining on the plantations in exposed localities from falling into the hands of the enemy, and to form the basis for a foreign loan. The latter, however, could have been sufficiently established, as it was, by voluntary subscriptions, and largely more was obtained in this way than could be carried to the seaports or run through the blockade. But Mr. Phelan conceived, no doubt, that the more of the staple the Government controlled the greater would be the weight of its credit, and stronger the inducement to foreigners to protest against the blockade.

At the close of the war Judge Phelan found himself impoverished, and not even permitted to resume the practice of his profession, which constituted his only means for the support of his children. Under these circumstances he went to Washington to ask at the seat of Government for the removal of his disabilities. He was no stranger to the President, and although there were others on a like errand who had been waiting for an audience many days, Mr. Johnson, on receiving the card of Judge Phelan, directed that he should be shown in immediately, and inquired of him the object of his visit. Judge Phelan carried with him no papers; he went there to make no plea in abatement or recantation of his opinions, and therefore answered merely, "I

have come to get permission to work in order that I may support my children." To some remark of the President in regard to the conduct of the South, Judge Phelan promptly responded that he had followed his convictions of duty, and had no apology to offer. President Johnson, to his honor, respected the manhood of the answer, and influenced, perhaps, by the evident integrity of the speaker, referred him to the Attorney-General, who was instructed to prepare the necessary papers which would enable the Judge to resume his professional labors.

He returned to Aberdeen and revived his copartnership with Judge Sale, which was afterward joined by Colonel William F. Dowd ; but the ravages of war had left but a remnant of the wealth which formerly abounded in the country in which he had made his home, and seeking more encouraging prospects in the pursuit of his profession, he removed, in 1867, to Memphis, Tennessee, and became associated with Judges William L. Harris and Henry T. Ellet, both formerly of the High Court of Errors and Appeals of Mississippi. This firm was characterized by transcendent ability, and enjoyed every prospect of a large patronage ; but was dissolved, on the death of Judge Harris, in 1868. Judge Phelan continued the practice of his profession in Memphis with success and marked distinction to the time of his death, which occurred on the 17th of May, 1873.

As a lawyer Judge Phelan was brilliant and profound. The faculties of his mind were quick, energetic, and grasping, and were always at his command. He had mastered every feature of the law, and his familiarity with the decisions of the courts loaded his vivid memory with an inexhaustible store of precedents, from which his genius was never at a loss to model an analogy. He was quick to perceive the substance and character of a proposition, and his powers of analysis penetrated readily the most complex questions of law and fact, and resolved the most abstruse features into clear and unquestionable principles ; and then, again, he would gather the scattered elements of abstraction and bind them into a synthetical hinge, upon which conviction would pivot at his bidding. His argumentation was always logical and closely knit, and his presentation of his cases was clear, forcible, and convincing. His thoughts were em-

bodied with the interest of his clients, and he clung to their causes with the ardor and fidelity of a zealot.

As an orator Judge Phelan has had but few equals in the South. His command of language was remarkable, and his diction was chaste, engaging, and apt. His imagery and illustration were copious and brilliant; indeed, so varied was his metaphor that, however often he might repeat his propositions, they presented themselves with new force, and in such new and startling colors as to obviate even the resemblance of redundancy. He was exceedingly poetical in his taste, was fond of the tender and sentimental, as well as the grand and sublime. The author met him but once, but he recalls from an indelible impression the beautiful application he made during that interview of Sterne's figure of the angel, the tear and the blot. Few men possessed in a higher degree than Judge Phelan the mingled character of the lion and the lamb. Fearless, and when excited fierce, he was generous, chivalrous, and gentle; and though he usually wore a cold exterior, he was warm-hearted, and even tender to the helpless and unfortunate. Perhaps this trait will be better illustrated by the the two following incidents than by description.

On one occasion, at Aberdeen, he saw a man of desperate character with a pistol levelled at another quite near to him, and with serious intention of killing the object of his anger. Judge Phelan had no animosity to the one and no friendship for the other; notwithstanding, he sprang before the man with the pistol, and holding a knife near to his face, warned him if he pulled the trigger he too should die, thus saving the life of one who had no claim upon him, at the risk of his own.

While residing in Memphis, and when time had whitened his hair but had not chilled the impulses of his heart, he visited a circus where he saw a little girl placed on a horse to leap over some poles or ropes as the horse ran beneath them. The child failed in the attempt, and fell; the master of the ring replaced her upon the horse, and in a second attempt she again fell, and manifested the utmost dread and agitation while the master was preparing to force her to a third effort; but while he was in the act of replacing her upon the horse Judge Phelan ordered him

to desist. To this he made a defiant reply, and declared that the child should perform the feat. Judge Phelan answered, "At your peril dare to put her up again," and with such manifestation that the master of the ring sent her away.

Well has it been said that the truest are the gentlest. No braver, truer man than Judge Phelan walked the earth while he trod upon it, and the sod covers none more magnanimous and generous than he was. Just to his fellow-men, many of whom he had served and none of whom he had intentionally injured, with a deep love for all that is beautiful and with a devout reverence for his Creator, whom, without cant, he had devotedly worshipped, he met death like a Christian and philosopher.

## *Speech on the Judiciary Bill.*

Mr. Clay, of Alabama, having offered to amend the bill organizing the Supreme Court by repealing the 45th section of the Judiciary Act, passed by the Provisional Congress, giving *appellate* jurisdiction to the Supreme Court of the Confederate States, of cases originating in the State courts, arising under the Constitution, treaties, and laws of the Confederate States, etc., no Senator taking the floor, and the President having put the question for final action to the Senate,

Mr. Phelan rose and said :

"Mr. President : It might reasonably have been expected that those who advocate the repeal of an existing law would have presented us the argument demanding its expurgation from the statute-book. This, however, the friends of the pending amendment have declined. A consciousness of strength, doubtless, is the solution of their silence ; and unless this novel and menacing measure is to stalk unchallenged through the Senate, it must now be halted and assailed. In my opinion, the issue it presents involves questions and consequences of the most solemn import to the future peace and stability of our Government ; and I am amazed that, as a summer cloud, it awakens no wonder as it passes by. I think I perceive the sharp, quick, scarce-seen gleam of the lightning flash, though all is hushed, to be followed by a peal of jarring thunder. I feel, as it were, falling upon my heart the herald rain-drop which foretells the mustering storm that will ultimately rock to ruins the ascending

temple of our Confederacy. Thus counselling with my own conscience, obeying the behests of my own judgment, and unawed by the array of age and intellect which confronts me, in opposition, I dare not withhold my feeble voice from the condemnation of a measure which, as I believe, will be hurtful to the harmony and disastrous to the perpetuation of our country.

"Hurried to the floor, Mr. President, by the rapidity with which this measure was passing through the Senate, I am unable to produce a tithe of that documentary history which more ample time would have enabled me to obtain, corroborative and persuasive, if not absolutely conclusive, both of the constitutionality and expediency of the act proposed to be repealed.

"Let us first analyze the clause from which the power to pass this act is extracted. It is as follows:

"'The judicial power shall extend to ALL cases arising under this Constitution, the laws of the Confederate States, and treaties made, or which shall be made, under its authority,' etc.

"Our language furnishes no words more absolute, nor can a sentence be framed more comprehensive. The word 'ALL' exhausts the idea of unity, entirety, and completeness. . . .

"The question then recurs, Are the cases specified in the 45th section included within the catalogue of those enumerated in the Constitution? This is not denied. If so, then the exemption of such cases from the *general grant*, when arising in *State* courts, must be specially shown from other clauses of the Constitution. It is alleged that the intention to limit the judicial power of the Confederate courts is apparent from the second clause of the 2d section of the 3d article, as follows:

"'In all cases affecting ambassadors, or other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.'

"What was the leading design of this clause? Was its primary object to indicate from *what* courts appeals should lie?

Was it to determine the *general* matter of appeals at all? Surely not. It was to select from the enumerated heads of general jurisdiction a few cases which should be *originally* instituted in the Supreme Court. It says, *In all other cases* before mentioned the Supreme Court *shall have appellate jurisdiction.*' The grant of appellate jurisdiction is as comprehensive as the grant of power in the preceding clause. It attaches to 'cases,' not to courts. No words of limitation anywhere appear; and to interpolate by implication the words 'in the Confederate courts,' or other equivalent expression, but betokens the blindness, as it will tax to exertion the giant's strength.

"The law now sought to be repealed is the 45th section of our Judiciary Act, which gives to the Supreme Court of the Confederate States appellate jurisdiction over the State courts in cases arising under the Constitution, treaties and laws of the Confederate States, etc. This section of our act is, with certain alterations, the 25th section of the Judiciary Act of the United States. The clause in our present Constitution, upon which said 45th section is based, is identical—so far as this issue is concerned—with the old Constitution upon which said 25th section was predicated. The history of that clause, and that law, therefore, under the old Government, are most pertinent in determining the constitutionality of the act proposed to be repealed.

"Never did instrument undergo an analysis so sifting and severe as that to which the Constitution was subjected, from the adjournment of the Federal convention to its final ratification by the conventions of the States. The general plan was stretched upon the rack of torturing criticism; every provision was punctured and explored; 'trifles light as air' confirmed the jealous lovers of liberty in apprehensions of danger; specks on the horizon, that have long since disappeared, were scanned with microscopic eye, as portentous harbingers of evil; and the uplifted voices of the mightiest intellects in the land were heard exclaiming, 'Lo! here!' and 'Lo! there!' as they labored to arouse and reveal to the people the alarming powers granted in the Constitution, all tending to centralize and consolidate the National Government, to the destruction of the sovereignty of

the States. The judicial power, filtered through the flames of an almost fanatic enmity, was charged with having yielded this appellate jurisdiction, in the enumerated cases, over the State tribunals; and although sedulous to guard against the exaggerations of this distempered zeal, and desirous to abridge, as sharply as truth and candor would permit, the powers conferred, yet this allegation was neither evaded nor denied by the friends of the Constitution; but, on the contrary, without a dissenting voice, the existence of such a power was boldly confessed and proclaimed. The Constitution was ratified, the Government organized, and early during the first session of the first Congress the law was enacted giving to the Supreme Court the jurisdiction now contested as unconstitutional. That Congress, too, was composed of several distinguished statesmen, who had been members of the convention by which the Constitution was formed; and all were fresh from the fierce debates, and flushed with the arguments against which it had battled, in its hard-won triumph through the States. The simple fact of its passage, under such circumstances, would seem to roll a great stone upon the mouths of those now so vociferous in its denunciation. But this is not the only argument in favor of its constitutionality furnished by that occasion. The debates in the Senate were not reported until 1794. In the House an attempt was made to prevent the organization of any inferior Federal courts, upon the ground that the State tribunals were sufficient for the administration of justice in those special cases specified in the Constitution; and in this connection the principle of the appellate jurisdiction of the Supreme Court over the State judiciary was fully discussed and asserted without the utterance of an opposing voice. Mr. Smith, of South Carolina, said:

"'Justice could be as well administered in the *State* as in the *District* courts; and their adjudications would be subject to revision in the Federal Supreme Court, which offered sufficient security. If the State courts are to take cognizance of those causes which by the Constitution are declared to belong to the judicial courts of the United States, an appeal must lie *in every case* to the latter, otherwise the judicial authority of the Union might be altogether eluded. To deny such an appeal would be to frustrate the most important objects of the Federal Government, and would

obstruct its operations. . . . 'Appeals from all the State courts to the Supreme Court would be indispensable.'

"Mr. Jackson said:

"'He was of the opinion that the people would much rather have one appeal which would answer every purpose; he meant from the State courts directly to the Supreme Court of the continent. If State judges do not respect their oaths, there remains the appellate jurisdiction of the Supreme Court to control them. They can reverse or confirm the State decrees as they may find them right or wrong.'

"The constitutionality and necessity of this power in the Supreme Court was asserted by many others, extracts from whose speeches it is needless to accumulate.

"Thus spoke from the porch of our national temple the living architects of the Constitution, in regard to its design, ere the scaffolding was removed through which it had ascended. The bill passed, was approved by Washington, himself President of the Federal Convention, and became a law. . . .

"In 1815 an act was passed giving to State courts jurisdiction of all complaints, suits, and prosecutions for taxes, duties, etc., *arising under acts of Congress.* No such suits or prosecutions, it provided, in any State court, should be delayed, barred, suspended, or defeated by any State law; and all final judgments were examinable in the courts of the United States '*according to the act of* 1789.' This bill originated in the House, was referred to a special committee in the Senate, composed of Bibb of Kentucky, Barbour of Virginia, and Chase of Vermont, who reported it with a slight amendment, was then considered in committee of the whole, and finally passed both Houses, *without even a division!* Yet this Congress was composed of such men as Gaston, Macon, Cheves, Forsyth, Troup, Lowndes, Pickens, and Calhoun! Reason becomes restive and probability impatient in thus laboring the facts of history in refutation of a fallacy so bald and patent as that embodied in the pending amendment. Let their torturing cease.

"From the date of its approval to the hour which shook the Confederacy asunder, through all the fluctuations of principles and predominance of parties, under every administration, and

amid the storms of political strife which have convulsed the country, no effort has ever been made to alter or repeal this first-born of our earliest Congress. And are the teachings of time, the sanctions of experience, the acquiescence of generations of great and good men who have gone before, to pass us by, unheeded as the idle wind? Are we now to be told, in tones of sternness, intolerant of denial, that a law, thus mantled with the sanctities of age, and covered with the hoar-frost of antiquity and tradition, is but the wrinkled harlot of political prostitution, still pregnant with the foul progeny of Federalism?

"I am not unaware that, in a case or two in the State tribunals of Georgia and Virginia, the constitutionality of the act under discussion has been involved, and advocates of repeal have referred to those decisions as the impregnable fortress from which we are to be demolished. Unable to obtain the volumes, I invoke their production by those who follow me in reply, and pledge myself to establish that in not more than one of them, perhaps, was the question of the constitutionality of the existing law either presented or decided. But admitting at this point the full force attributed to those few isolated decisions, to what weight are they entitled, even as mere legal precedent or authority, in comparison with the 'multitude which no man can number' of distinguished jurists by whom the law has been recognized, obeyed, and defended for nearly a century, in courts of equal dignity, convened over half a continent! Their novelty alone invests them with notoriety; and, contrasted with the array of learning and intellect by which they are confronted and confuted, they are but as 'dust in the balance,' or atoms in the air. Their fate is conclusive of their fallacy. Things of a day—the wonder of an hour—like bubbles, they rose and broke upon the torrent they sought to stem, and, unheeded, were swept into forgetfulness. Again, by what strange reversal of established rule and perversion of ancient practice do Senators flout in our faces and demand deference to the decrees of these judges of a State, to the discardal and contempt of the opinions of the supreme bench of the United States, by which, without a dissenting voice, they were as often reversed and denied? Senators would illuminate and magnify, beyond all legitimate

influence, the few men by whom they are sustained, whilst they seek to dwarf and diminish the multitude of mighty intellects by whom their allies are overshadowed and obscured. The fables of the frog and the ox, and the cock among the horses, aptly illustrate the hugeness of their effort and the danger of their position. As if conscious of the futility of the enterprise in which they have embarked, the Senator from Texas (Mr. Wigfall) more than intimates his belief that the existence of a Supreme Court is detrimental to the welfare of the country; and threatens, if the pending amendment is defeated, to resist the organization of such a tribunal. Energized by a spirit of such relentless hostility, the rude hand of innovation is, then, to be lifted for the destruction of that ancient temple whose solemn ministrations forbid the strange fire he would pile upon its altar! Will not such a sentiment startle from their repose those who appreciate and would perpetuate the checks and balances which preserve, in equipoise, the delicately-adjusted machinery of our confederate form of government? . . .

"The act of 1789, though constitutional, was justly obnoxious in its detail, to criticism and censure. Congress, however, and not the court, merited condemnation for the policy it initiated. The wrong alleged to have been perpetrated was not in *enlarging*, but in *limiting*, in the cases specified, arising in State courts, the appellate jurisdiction of that tribunal. The act was as follows:

"'SEC. 25. A final judgment or decree, in any suit in the highest court of law or equity of a State, in which a decision can be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under the United States, and the decision is *against their validity*, or where is drawn in question the validity of a statute of, or authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is *in favor of their validity*, may be re-examined and revised or affirmed, in the Supreme Court of the United States, upon a writ of error.'

"The direct and practical tendency of this section was to strengthen the legislative and executive, and to deprive the judicial department of its legitimate influence in the operations of the Government. It avoids, as far as may be, all interference

by the Supreme Court with the action and designs of the other departments, by sheltering them behind the judgment of the State judicatures whenever those tribunals decided in favor of their usurpations. If, in such a contest, the State court sustained the validity of Federal legislation, its decree was final; *no appeal was allowed!* Should such court, however, deny the validity of such action, *an appeal might be taken.* There was, then, everything to be gained by the Government, and nothing to lose. A decree in favor of the power exercised by the Federal Government was virtually declared to be infallible. A denial of its power by the same court was supposed to be wrong, and might be revised. *Now, this offensive feature of the old act has been abolished, in the law enacted by the Provisional Congress, proposed to be repealed.* Appellate jurisdiction is given to the Supreme Court, in the enumerated cases, whether the State tribunals admit or deny the validity of legislative action, and whether they oppose or support the assumed powers of the Federal Government. The partition wall has been broken down which forbid the entrance of the citizen into the high forum of the national judiciary, to invoke protection against legislative oppression, sustained by sectional adjudication; and the door of its majestic temple now stands open wide to welcome the humblest suitor who seeks its altar to redress his wrong! . . .

"The flower takes its coloring from the soil from which it springs, and the atmosphere by which it is surrounded. The venerable Senator (Mr. Barnwell) was reared in South Carolina, and a member of its famed Convention in 1832. The Senator from Alabama (Mr. Yancey) also, I believe, a native of that State, has battled for the principle as it were the law, scorched by the finger of heaven upon tablet stone; whilst the Senator from Texas (Mr. Wigfall), reared in the same State, full charged in every fibre of his frame with its subtle fluid, sparkles whenever touched with the animating electricity of the doctrine. Let me not be misunderstood in my reference to South Carolina. My earliest political reading and reflection are blended with an appreciation of her noble but erratic zeal in seeking 'to drag by the locks' the drowning rights and honor of the

South. Denying the remedy by which she sought to redress our wrongs, my heart ever thrilled with admiration of her gallant people and dauntless chiefs ; and, as barrier after barrier gave way which guarded the citadel of Southern safety under the pressure of compromises, concocted by political factions, struggling for the spoils of power, I watched her standing aloof from the vain strife, with a faith that never faltered, and an eye that never slept—the lone sentinel upon the watch-tower of Southern freedom ; and when the fulness of time had come, by her prophet-statesman so long foretold, never can my soul so thrill again with gratitude and gladness as when I beheld her snatch the symbol of her sovereignty from the gorgeous flag of the Union, fling her blue banner, with its defiant star, to the mustering winds of revolution, and prepare to tread alone, if need be, the red wine-press of war. But stern and self-sacrificing as has been her spirit in defence of Southern rights and honor, the political theory of our Government, as propounded by her distinguished statesmen, and to which the pending amendment is allied, never has and never will be sanctioned by any portion of the American people. I do not invoke, neither will I participate in, any discussion of the doctrine of nullification. The subject was exhausted in that 'war of the giants,' under the shock of whose encounter the nation stood entranced. Further argument or effort upon the theme, like the kaleidoscope, though casting, perhaps, novel and attractive figures, would be but multiplied reflections of the bright particles and broken fragments of that logic and eloquence, the full glory of whose pristine splendor illumines the past. Whether right or wrong, as an abstract principle, the necessity for a recognition of the doctrine of nullification has been merged in a practical assertion of the great right of secession, now the foundation-stone of our new Republic. An attempted exercise of this sacred right under the old Government, it was always felt, hazarded, and did actually awaken, the tocsin of war. Now, if in her sovereign capacity a sister State shall proclaim her separation from the Confederation, we smoke the calumet, and bid her depart in peace. . . .

"I desire now no strong government, like a central and

self-dependent sun, attracting by its power and absorbing by its influence the essential and substantial rights of the people and the States; but rather, like the moon, shedding its serener ray of light, reflected from the original fountain, mingling its radiance and sharing the glory of the night with the bright stars of sovereign and independent States by which it is attended. But pass the measure now pending, and the stars, one after another, will fall from your national standard, 'even as a fig-tree casteth its untimely figs, when shaken of a mighty wind.' The frailest gossamer that floats upon the breeze will be a chain of triple steel in comparison with the brittle tie which binds together our rising Confederacy. Let the mighty mountain of our revolution, whose painful and protracted laboring is now filling the land with gore and groaning, give birth—neither to a mouse contemptible for its insignificance, nor to a monster, dangerous for its giant strength; but let there come forth a being of manly beauty and heroic mould, clothed with majesty, but girt with goodness, a compound of humanity and divinity, and which, though liable to die, will impart immortality to its existence by the wisdom, the justice, and the moderation of its reign."

Messrs. Semmes, of Louisiana; Yancey, of Alabama; Barnwell, of South Carolina; Haynes, of Tennessee; and Maxwell, of Florida, having addressed the Senate in support of the amendment of the Senator from Alabama, Mr. Clay,

Mr. Phelan said:

"Mr. President, having been forced to open this debate, and having furnished a target for distinguished Senators who have occupied the floor, I accept the indulgence, in fairness accorded me, of a general reply to the converging batteries by which my argument has been assailed. The storm of assault has been encountered, and the positions defended, I humbly conceive, still stand, not only undemolished, but impregnable, strengthened rather than impaired by the novel nature of the attack which they have elicited. . . .

"In seeking to establish the power of Congress to grant to the Supreme Court appellate jurisdiction over the State courts

in ' cases ' arising under the Constitution, treaties and laws of the Confederate States, I hastily collated the facts of contemporaneous history and exposition. Challenged to such a compilation by the Senator from Texas, the legitimacy of the argument, deducible from that source in the pending issue, was not only acknowledged, but asserted. It was not, therefore, to have been anticipated, after appearing at the summons, that the advocates of repeal would not only have shunned the combat, but have denounced, as beneath the dignity of the contest, their own chosen arena. Yet what says the Senator from Alabama (Mr. Yancey) in relation to the mass of historical facts adduced in my former argument, persuasive, if not absolutely conclusive, of the constitutionality of the act he urges us to repeal? Refusing to confess the force, but without attempting to weaken, by analysis or denial, this truthful and convincing array, with scarcely less than divine authority he says to the mountain pile, ' Be thou removed and be thou cast into the sea.' But the stubborn hill still obstructs his pathway. He dare not hazard its ascent; he cannot remove, and his commands it will not obey. I also cited the opinions of eminent statesmen of an early day in exposition and support of the act sought to be destroyed. To this argument the Senator from Alabama replies—and it has been repeated by others on the same side—that both precedents and opinions are of a nature too doubtful and dangerous either to command his respect or to furnish a basis for his legislative action; and with that boldness which ' would grasp without remorse, and wear without shame, the diadem of the Cæsars,' he proclaims that we of to-day better comprehend the meaning of the Constitution than those sages whose creative minds brought it into being.

" Mr. President, it was only Him who spake as never man spake, who could thus dissipate, by the word of his mouth, the sayings ' of them of old time,' and substitute for their teachings His own infallibility. I disclaim the portion falling to myself, of those high powers, which the sentiment of the Senator from Alabama would confer upon us all. I delight to drink at those deep wells—at which generations have slaked their thirstings—dug in the wide waste of the world's barren

brain, by those patriarchs of the past, who have now gone to rest, as rest I trust they do, 'where the good rest, and their works do follow them.' I desire to imbibe truth, and seek for strength in the warfare of life at the well-worn pilgrim shrines of

> ——"'the great of old,
> Those dead, but sceptered sovereigns, who still rule
> Our spirits from their urns.'

"I prefer to steer my frail and tossing bark by the beacons and landmarks of those 'immortal names that were not born to die;' and in comparison with whose mighty fame we puny politicians of to-day but duplicate that wonder of the museum which represents the mammoth frame of the mastodon bestriding the tiny skeleton of the mouse. Conscious of my infirmity, and distrustful of my own erring judgment, I choose to follow the guidance of those wise men the radiant chandelier of whose wisdom and virtue and intellect illumines my pathway, rather than, like the ephemeral firefly, to pursue my devious wanderings, aided only by the dim ray emitted from the dark lantern of my own mind.

"This novel and abrupt discardal of all that has hitherto been recognized as sacred and legitimate in such investigations as that in which we are now engaged, could only have been extorted by the dire extremity to which our opponents have been reduced. In his great speech upon the constitutionality of the United States Bank, Mr. Madison asserted the following rules of construction in the interpretation of the Constitution:

"'An interpretation which destroys the very characteristics of the Government cannot be just.'

"'In controverted cases, the *meaning of the parties to the instrument*, if to be collected by reasonable evidence, is a proper guide.'

"'*Contemporaneous* and *concurrent expositions* are a reasonable evidence of the meaning of the parties.'

"Undeterred, therefore, by the cavalier coolness with which such testimony has been flipped from the fingers of Senators, I proceed to add other selections from the stores of contemporane-

ous history in condemnation of the insidious heresy with which the policy of the country is so eagerly sought to be impregnated.

"I read from the 82d number of the *Federalist.*"

A Voice.—Alexander Hamilton, the Federalist.

Mr. Phelan.—"Mr. President, I have heard, without astonishment, the name of this truly great and patriotic statesman huffed by scuffling partisans amid the wranglings of the hustings, but I am surprised that it should thus be assailed with a sneer, in a body supposed to be conversant with his history. Mr. Hamilton was never a Federalist in that sense which made it a term of opprobrium. He never held that the Constitution constituted a government of *the aggregate people*, and not a *compact between sovereign States.* This was the *fundamental* principle which gave rise to the old Federal and Republican parties. He declared 'that there is not a syllable in the plan of the Constitution which empowers the national courts to construe the laws according to the *spirit of the Constitution.*'

"Mr. Calhoun said:

"'The doctrine of consolidation maintained by the Senator from Massachusetts was not the doctrine of Hamilton, who strenuously maintained the *federative character of the Constitution*, but who was accused of supporting a policy which would lead to consolidation.' . . .

"I challenged the production of those decisions in State tribunals by which the unconstitutionality of the act sought to be repealed was alleged to have been maintained, and pledged myself to prove that in not more than one or two of them was the point ever presented or determined. I also denied that the old Supreme Court had ever asserted any power over *political questions*, or the right to adjudicate such controversies between the States and the General Government as parties to the original compact, and that the few cases which had provoked criticism, as trenching upon the sovereignty of the States, only granted the citizen, when sued or prosecuted *by a State*, a right to have the judgment against himself, involving his rights under the Constitution, the treaties, or the laws of the United States, reviewed in the supreme national judiciary. How has this solicitation and denial been met and accepted? Hours of argument

have been expended, and indefinite references made to decisions, but without the presence of a volume, or the analysis of a solitary case! A judgment by default, or a sentence for standing mute, may fairly be demanded on these points against the friends of the amendment. As a substitute for the specific disclosures of judicial arrogance and usurpation, we were warned to anticipate, under the laws of 1789 on the part of the Federal judiciary, we have only listened to discursive criticisms upon the character and influence of a distinguished individual, the essence of all of which was energetically declaimed, in the language of the Senator from Texas (Mr. Wigfall), 'that in stamping his opinion upon the country, Chief Justice Marshall had done more to change the character of our Government, to fasten upon its policy a tendency to consolidation, and to destroy the sovereignty of the States, than any other man who ever lived.' Irrelevant as such general assertions are to the pending issue, I trust I may be indulged briefly to attempt an humble vindication of that eminent jurist from the harsh charge with which his memory has been assailed. Time would not permit, nor does the occasion demand, a minute dissection of the numerous decisions upon constitutional law pronounced by that eminent man. It will be sufficient to establish his sacred regard for the sovereignty of the States, his denial of the liability of a State to be made a *defendant* upon original proceedings, his disclaimer of all right in the Federal judiciary to determine *political questions*, and his restriction of its jurisdiction to '*cases*' in law or equity between parties liable to be summoned to its forum.

"Pending the debate in the Virginia Convention, as to whether a *State* was not liable to be sued under the grant of judicial power, Mr. Marshall said:

"'With respect to disputes between a *State* and the *citizens* of another State, the Federal jurisdiction has been decried with unusual vehemence. I hope no gentleman will think that a State will be *called at the bar of the Federal court*. . . . It is not rational to suppose that the sovereign power shall be dragged before a court. . . . It is said there will be partiality in it *if a State cannot be defendant;* if an *individual* cannot proceed to obtain judgment against a *State*, though he may be sued by a

State. It is necessary to be so, and cannot be avoided. I see a difficulty in making a *State defendant* which does not prevent its being plaintiff.'

"In 1800, one Robbins was brought by *habeas corpus* before the district judge of South Carolina, when it appeared that the prisoner was charged with having committed murder on the high seas, on board a ship of war belonging to England. Requisition was made by the British minister that he be delivered up, by virtue of the twenty-seventh article of the treaty of amity between the United States and Great Britain. At the request of Mr. Adams, then President, an order was made to that effect. At the next session the subject was brought before Congress by Mr. Livingston, of New York, by certain resolutions, one of which began as follows :

"' *Resolved*, That inasmuch as the Constitution of the United States declares that the judiciary power shall extend to all *questions* arising under the Constitution, laws, and treaties of the United States, etc.'

"In the debate which the resolutions elicited, Mr. Marshall said :

"' The gentleman from New York has relied on the 2d section of the 3d article of the Constitution, which enumerates the cases to which the judicial power of the United States extends, as expressly including that now under consideration. Before he examined that section it would not be improper to notice a very material *mis*-statement of it made in the resolutions offered by the gentleman. By the Constitution, the judicial power of the United States is extended to all *cases in law or equity* arising under the Constitution, laws, and treaties of the United States ; but the resolutions declare the judicial power to extend to *all questions* arising under the Constitution, treaties, and laws of the United States. The difference between the Constitution and the resolutions was material and apparent. A *case* in law or equity was a term well understood, and of *limited* signification. It was a controversy between parties which had taken a shape for judicial decision. If the judicial power extended to every *question* under the Constitution, it would involve almost every subject proper for legislation, discussion, and decision ; if to every *question* under the laws and treaties of the United States, it would involve almost every subject on which the executive could act. The division of power stated by the gentleman could exist no longer, and the other departments would be swallowed up by the judiciary." . . . By extending the judicial power to all *cases* in law and equity, the Constitution had never been understood to

confer on that department *any political power whatever*. To come within this description, a question must assume a legal form for a forensic litigation and judicial decision. There must be parties to come into court *who can be reached by its process and bound by its power;* whose rights admit of ultimate decision by a tribunal to which they are bound to submit. A "*case*" in law or equity—proper for judicial decision—may arise under a treaty where the rights of *individuals* acquired or secured by a treaty are to be asserted or defended in court. *But the judicial power cannot extend to* POLITICAL COMPACTS.'

"Can the Senator from Texas (Mr. Wigfall) conceive or express a purer doctrine in regard to the judicial power, as connected with the sovereignty of the States, than this speech contains?

"In 1824, in Osbern *vs.* United States Bank, Judge Marshall, after quoting the judicial clause, reiterates the same principle, as follows:

"'This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States, when any question respecting them shall *assume such a form* that the judicial power is capable of acting on it. But that power is capable of acting *only* when the subject is submitted to it, by a party who asserts his rights *in the form prescribed by law.* It then becomes a case. . . . The words seem intended to be as extensive as the Constitution, laws, and treaties of the Union, and designed to give the courts of the Government the construction of all its acts, *so far as they affect the rights of* INDIVIDUALS.'

"Let me close this imperfect defence both of the Supreme Court and of the eminent Chief Justice, by whom it was so long adorned, against the special distrust and criticism of the Senator from Texas, by a reference to the opinions of Mr. Calhoun:

"'I yield,' says he, 'to few in my attachment to the judiciary department. I am fully sensible of its importance, and would maintain it to the fullest extent in its constitutional powers and independence.'

"Again: 'I must greatly lower my opinion of that high and important tribunal for intelligence, justice, and attachment to the Constitution; and particularly of that pure and upright magistrate who has so long, and with such distinguished honor to himself and the Union, presided over its deliberations with the weight that belongs to an intellect of the first order, united with the most spotless integrity—to believe, for a moment,

that an attempt so plainly and manifestly unconstitutional as a resort to force would be in such a contest, could be sustained by the sanction of its authority.'

"Mr. President, it was asserted that to resist the pending amendment was to favor the odious doctrine of federalism, and to assume a position antagonistic to the principles of the Republican party of early days. This charge swept within its compass a respectable portion of members on this floor. I denied the imputation with an emphasis which disdained all compromise, and defied the production of a particle of truth by which it could be substantiated. Who has attempted to accept the challenge, extorted from us by so severe an arraignment?

"My whole argument, thus far, has tended not only to a general refutation of the charge alleged, but to prove that the maintenance of the law, sought to be repealed, was the doctrine and design of the old Republican party. Let the proof be more closely riveted. The memorable contest of 1798 brought that party into existence. Mr. Madison, more than any other statesman, stood forth its parent and sponsor; and his celebrated Report has ever furnished the platform of the party, and the exposition of its principles. He was a member of the first Congress, in 1789, by which the Judiciary Act was passed, and defended this appellate power of the Supreme Court over State tribunals in the following emphatic language:

"'Mr. Madison said it would not be doubted that some judiciary system was necessary to accomplish the objects of the Government, and that it ought to be *commensurate with the other branches of the Government*. Under the late confederation it could scarcely be said that there was any real legislative power; there was no executive branch, and the judicial was so confined as to be of little consequence. In the new Constitution a regular system is provided. The legislative power is made effective for its objects; the executive is co-extensive with the legislative; and it is *equally proper* that this should be the case with the judicial. . . .

"'Laying aside all other difficulties, a review of the Constitution of the courts in many States will satisfy us that *they cannot be trusted with the execution of the Federal laws*. In some States they might be safe organs of such a jurisdiction; but in others they are so dependent on State legislatures that to make the Federal laws dependent on them would throw us

back into all the embarrassments which characterized our former situation.'

"The doctrine advanced by the Virginia and Kentucky resolutions of 1798–99 does not deny the constitutionality of this appellate power of the Federal Supreme Court in 'cases' involving the rights of individuals. They assert a principle in no way connected with it. The fundamental doctrine they present, as embraced in the third Virginia resolution, is 'that in case of the exercise of powers not granted in the compact, the STATES who are *parties* thereto have the right to INTERPOSE for arresting the evil, and for maintaining within their respective limits the authorities and liberties appertaining to them.' It is only the *States*, in their sovereign capacity as such—as parties to the compact—and through the same medium by which they became parties, that can thus 'interpose' to arrest the execution of Federal laws. No single department of a State *government* can do so; and, until the State does thus 'interpose,' mere individual rights, litigated in the form of judicial 'cases' arising under the Constitution and laws of the United States, are recognized as being subject to the final adjudication of the Federal judiciary. Until the State in its *sovereign capacity* does thus interpose, its sovereignty cannot be involved! This right of a State thus to interpose was denied by the old Federal party, who asserted, in the answers of their legislatures to the Virginia resolutions, 'that in the Federal courts, *exclusively*, and in the Supreme Court of the United States, *ultimately*, was vested the *sole* authority of deciding on the constitutionality of every act of the Congress of the United States.' To this Mr. Madison, in his Report, thus replies:

"'It is objected that the judicial authority is to be regarded as the *sole* expositor of the Constitution, *in the last resort*. On this objection it may be observed, 1st, that there may be instances of usurped power which the *forms* of the Constitution would never draw within the control of the judicial department; 2d, that if the decision of the judiciary be raised above the authority of the *sovereign parties* to the Constitution, the decisions of the other departments, not carried by the forms of the Constitution before the judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objec-

tion is that the *resolution* of the General Assembly relates to those great and *extraordinary* occasions in which all the ordinary forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the *parties to it.* The resolution supposes that dangerous forms, not delegated, may not only be usurped and executed by the other departments, but that the judicial department also may exercise or sanction dangerous powers beyond the grant of the Constitution ; and, consequently, that the ultimate right of the *parties to the Constitution* to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another ; by the judiciary as well as by the executive or the legislative.

" ' *However true it may be* that the judicial department is, in all questions, *submitted to it by the forms of the Constitution,* to decide in the last resort, this resort must, necessarily, be deemed the last in relation to the authorities of the other departments of Government ; not in relation to the rights of the *parties* to the constitutional compact from which the judicial as well as the other departments hold their delegated trusts.'

" Mr. Jefferson, the friend of Madison, the champion of the old Republican party, and the apostle of liberty, declared

" ' That the courts of the States retain all their judicial cognizances not expressly alienated by the Federal Constitution. The Federal Constitution *alienates from them all cases* arising under the Constitution, laws of Congress, treaties, etc.'

" Is it not wonderful that the alien and sedition laws, which only violated the *rights of the citizen,* should have alarmed the statesmen of that day, and aroused a tempest of popular indignation, which, rolling its thunders to the Capitol, prostrated in ruins a powerful party, and tore the obnoxious enactments from the statute-book ; while an act now branded as a fell destroyer of the *sovereignty of the States* was then permitted to erect its slaughter-house upon an opposite page of the Constitution ! Truly are we ' wiser in our generation than were the children of light.' . . .

" Let the emphatic asseveration of Mr. Calhoun finish the proof. In defending the peculiar traits of his party against Mr. Webster, in 1833, and in reply to an argument based upon the judicial power of the General Government, Mr. Calhoun said :

" ' The clause in the Constitution which provides that the judicial power shall extend to *all cases in law or equity* arising under the Constitution,

and to the laws and treaties made under its authority, *has no bearing on the points in controversy.*'

"Mr. President, a word, and I have done. The principle of the amendment, so far from elevating, trails in the dust the true dignity of the States. It recognizes the omnipotent power of a supreme bench, composed of a few judges, virtually to disrupt their alliance with the Confederacy without the consent of the people. It arms a single co-ordinate department of a State government with the despotic prerogative of paralyzing and arresting at any moment, and against their will, the co-operation of both the legislative and executive departments, in giving efficiency to the administration of the General Government. . .

"The principle deeply dishonors, in the estimation of mankind, the lofty spirit and true dignity of our common Confederacy. National degradation invites indignity. In the elegant language of Junius, 'Public Honor is security. The feather that adorns the soaring bird supports his flight. Strip him of his plumage, and you fix him to the earth.' There is something august and imposing in the idea of a State convoking in council the majestic sovereignty of its people, suspending its existing governmental organization, and proclaiming in that popular voice, which is as the voice of God, that it dissolves its political connection with the Confederation, and reassumes, as an independent State, its separate seat in the great college of nations! The mighty consequences incident to such action are consistent with the potent and imposing organ through which it is proclaimed. . . . "

## WILLIAM R. BARKSDALE.

William Robert Barksdale was born in Lauderdale County, Alabama, on the 26th of April, 1834, but removed with his parents, in October of the same year, to the county of Yalobusha, in Mississippi. They were natives of Tennessee, and were intelligent and influential citizens, noted for their exemplary moral and social worth, and for their domestic virtues and parental solicitude. And the subject of this sketch, after having received the advantages of the best schools of his county, was sent, in 1851, to the State University at Oxford, where he graduated with distinction in 1855.

His deportment while at college was notably scholastic, and his studious habits, strict observance of the rules, courteous manners, and high sense of honor gained the admiration and esteem both of the professors and of his fellow-students, and he developed during his collegiate course a vigor of intellect and an inquisitiveness of mind which destined him for an eminent sphere in life. So prominent were his scholarly attainments, and so exemplary his integrity and moral habits, that, after having graduated, he was retained two years at the University as an adjunct professor ; but, in 1857, having chosen the profession of law, for which his talents seemed peculiarly adapted, he entered the law school of the University, and in 1859 received his diploma from that department. He then returned to Yalobusha County, established his office in the town of Grenada, and entered immediately upon a brilliant professional career. But the versatility of his genius, his eloquent oratory, and ardent patriotism were soon demanded in another sphere, and he responded with alacrity to the public call, and entered the service of his State with all the spirit and enthusiasm of his nature.

In the fall of 1860 he was chosen by the States Rights party, of which he was a warm and strenuous advocate, to a seat in the memorable convention which, on the 9th of January, 1861,

passed the Mississippi Ordinance of Secession, and, although he was but twenty-six years of age, he was a conspicuous member in that distinguished assembly. The vigor of his counsel, the ardor of his patriotism, and the fire of his eloquence not only challenged the attention and respect of the wisest men, but kindled a glow which permeated the action of that body and gave warmth to its proceedings.

But if Mr. Barksdale was ardent in his advocacy of secession, he was equally ready to seal the act with his blood, and, at the first call of his State for troops, in 1861, he responded to the sound of its bugle, and from that day to the closing scene of the struggle he followed the flag of the Confederacy with Spartan gallantry and patriotic devotion.

In 1862 he was promoted to the position of Adjutant-General on the staff of General W. S. Featherston, with the rank of major, and served in that capacity until 1864, when he was transferred to the staff of Major-General Walthall. He was a faithful and efficient officer. General Featherston, in his eulogy on his life and character, delivered in the Mississippi House of Representatives in January, 1877, said :

"He was a model soldier, fearless in action, self-sacrificing and noble in example. Like the heroes of the Roman Republic, his country was his idol, upon whose altar no sacrifice was too dear to be made. He followed the path of duty without reckoning where it led—whether to victory or the grave. In the storm of battle he was calm, self-possessed, and ever pressing upon the foe with undaunted courage. In camp, on the march, and in all the various phases of a soldier's life, he was always to be found in the full discharge of his whole duty—an exemplar to his comrades in arms. And although he rose not higher than a major in the military service, he was in intellect and courage, strategy, and all the elements of true generalship, capable of higher command. He did not seek his own promotion : he rose above all selfish thoughts, and with all the zeal that could glow in the heart of a pure patriot, looked alone to the independence of his native South, and to the attainment of that end he directed all the powers of his mind and body."

At the close of the war Major Barksdale resumed the prac-

tice of his profession in Yalobusha County, accepted with manliness the harsh degrees which Fate had pronounced against his country, and maintained the terms of the Southern surrender with a faith which only the highest sense of honor could guarantee.

He applied himself diligently to the restoration of law, order, and good government; and so vigorous and fervid were his efforts in this respect, so just and pronounced the appreciation of his ability and integrity, that, during the exclusiveness of the Radical *régime*, he was elected to the office of District Attorney, a position which he filled with an efficiency that checked the demoralizing effects of Radical policy and re-established the security of society. He was a bold and fearless officer, and followed the path of his duty regardless of circumstances. He had no compromise to make with lawlessness, no leniency to offer to crime and corruption, but his aims were fixed upon the goal of right, and he was guided only by the standard of integrity.

In the great political revolution of 1875 Major Barksdale was elected to a seat in the lower House of the Legislature of Mississippi, and held a prominent position in that body. He took an active part in the dethronement of Governor Ames and in the dispersion of his notorious officials. His commanding yet courteous dignity, his thrilling eloquence and marked ability, gave him an influence that made its impression upon every legislative act, and his opinions were eminent among the criterions of wisdom and expediency.

But in the noonday of his promise, and in the midst of the reviving hopes of his country, to which he had so prominently administered, his career was suddenly ended, and Mississippi was called upon to mourn the death of one of her most devoted and useful sons. He died at Grenada on the 10th of January, 1877.

Many beautiful and touching tributes were paid to his memory in both Houses of the Legislature, which was then in session, and his character and services were set forth in preambles and resolutions, and by the speakers, in elegant and glowing terms, while the members of the bar embalmed his memory in honor upon the records of the courts of his county.

As a lawyer Major Barksdale was a safe and conscientious counsellor. He was quick to perceive, yet cautious in his conclusions. His mind was highly analytical in its operations, and his judgment was the result of a thorough process of reasoning. While his genius was of a superior order, he yet trusted no specious paths of instinct, and relied upon no byways of intuition. His cases were thoughtfully and thoroughly investigated, and he proceeded with the sure-footed pace of reason.

He was eminently a practical man, and, discarding the mere theoretical and visionary, he sought only for the reasonable and the real. He viewed things in their true relation, and when satisfied as to their character and significance, he acted upon his own judgment. General Walthall, who was intimately acquainted with Major Barksdale, says :

"More than any man I ever knew, his conduct was regulated by his head, and less by impulse or passion, but the proportions of his character and intellect were so harmoniously adjusted that he could have had no safer guide. For his judgment was dispassionate, neither colored by fancy or sentiment, nor distorted by prejudice impervious to reason. His sense of duty was high and pure, and his convictions of right and wrong were clear and well-defined. His standard of justice was exact, his sense of honor elevated, and his courage calm and fearless. Therefore, both as concerned himself and those he dealt with, he could have had no more unerring director of his course than his philosophic mind, supported by his sound morality."

Major Barksdale was fond of the labors of his profession His industry was systematic and unremitting, and he was assiduous in his searches for the solution of every question which presented itself in his practice. He was consequently deeply learned for one of his age and experience, and had his life been prolonged, he would doubtlessly have become one of the most profound lawyers of his time.

While he was too much devoted to the duties of his profession to dally in the lap of society, he was full of charity and neighborly kindness, and his friendships, though slowly and cautiously formed, were maintained with a knightly faith and growing warmth. He was true to every conception of duty, faithful and



frank to his clients, and maintained toward the court and his brother members of the bar an honorable dealing and a bearing of uniform courtesy and propriety.

He was ambitious of applause and popularity, but it was "that popularity which follows, and not that which is run after." He scorned a baseless reputation, and sought to lay a solid foundation for the eminence which he strived to achieve—an eminence founded in the solidity of his own proven worth, and erected *pari passu* with his own development. Hence he was an earnest and self-reliant man, devoted to the true, the real, and the practical; upon these he built his hopes, and upon these rested his title to the high character he enjoyed as citizen, soldier, lawyer, and public servant.

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## HARVEY W. WALTER.

In all human existence there is no blending of virtues so rare and admirable as that which characterizes the true philanthropist: which eliminates all idea of self from human actions, and devotes an individual to the service and welfare of his fellow-creatures. Such was the character of the Saviour of mankind, and we may only look for such along the path in which he trod—among those who, like the subject of this sketch, have imbibed his spirit and follow his teachings, which enjoin that "greater love than this hath no man, to lay down his life for his friends."

Harvey Washington Walter was born in Fairfield County, Ohio, on the 21st of May, 1819, while his parents, who were natives of Virginia, were temporarily residing in that State, and at an early age removed with them to Kalamazoo, in Michigan, where they settled and lived to a venerable age. They were noted and highly respected for their noble and generous qualities, and it was from this source that Mr. Walter imbibed in his earliest youth that noble spirit which adorned his

character, and stamped his life upon the pages of virtue and of fame.

During his early years his father enjoyed the possession of wealth, and afforded his son every advantage ; but having suddenly lost the greater portion of his property by an unfortunate investment, he could no longer render him assistance, and at the tender age of fourteen years young Walter found his fate depending upon his own resources. But buoyed by his genius and ambition, and supported by the staff of a virtuous resolution, he stepped upon the journey of life ; and while no glittering prospects charmed his view, his destiny was haloed with the devout benisons of a father's blessing and the hallowed guerdon of a mother's prayers.

These were his only patrimony. With these he went forth, and his energy and determination soon cleared away the untoward circumstances that clustered along his youthful pathway. He alternately taught and attended school, and by this means obtained a collegiate education. Having completed his course in college, and seeking now for a propitious field for his future labors, he turned his eyes towards the South, as if impelled by those warm and generous feelings which sought the accord and mutuality always vouchsafed by that people with whom his lot was destined to be cast. About the year 1838 he joined the throng of emigrants who were pressing into the beautiful country which had been recently acquired from the Indians in North Mississippi, and having determined upon the profession of law, he taught school two years at Salem, in Tippah County, as a means of support while preparing himself for the bar.

In 1840 he obtained his license and located in Holly Springs, where every prospect which energy, integrity, and talent could engender in a fruitful field smiled immediately upon his career. He soon took his position in the front rank of his profession, and achieved pre-eminence at a bar which was scarcely excelled by any in the South. His splendid talents and indomitable energy were kindled and fueled by the able competition amid which he began his forensic career, and the blaze of his eminence continued in the ascendant. His ability extended in every direction of usefulness, and his name became associated with every

enterprise for the advancement of the interest of his county and for the promotion of the honor and welfare of Mississippi.

It was mainly through his exertions that the Mississippi Central Railroad was projected and pushed to completion—an enterprise which he foresaw to be necessary to the development of the resources of his section of the State, and to the accomplishment of which he devoted his energy and means liberally and unweariedly.

Mr. Walter was an ardent friend to the interest of education. He took great pride in the prospects of the University of Mississippi, and was at the time of his death one of its trustees. Refined and elevated in his sentiments, temperate in his habits, and lofty in his aspirations, he was a devoted Christian and the patron of every moral and religious promotion. He was long a conspicuous member of the Masonic fraternity, and after having presided over its various subordinate bodies, was, in 1844, made Grand Master of the State Lodge. He was a Mason not only in the mere superficialities of the order, but in heart, in practice, and in all the walks of life.

Mr. Walter was intensely Southern in his principles, yet as a Whig he opposed the doctrines of secession until he considered that measure an inexorable alternative to the dishonor and political degradation of his people, and then he was ready, as he was in everything that engaged his sympathies, to sacrifice whatever its promotion might demand. He was a member of the Mississippi Secession Convention, and served with great ability upon the Committee on Federal Relations. No sooner had the tocsin of war sounded than he girded himself for the struggle, and as lieutenant of a company of infantry responded to the first call of his State for troops, in 1861. He was ordered to Pensacola, and soon after reaching there was transferred to the staff of General Bragg as Judge Advocate, and served in that position with distinguished efficiency until the close of the war.

Colonel Walter accepted the conclusion of the conflict with the same conscientious and abiding faith with which he had drawn his sword, and returning to Holly Springs resumed the practice of his profession, counselled a conservative and dignified

policy, and devoted himself to the amelioration of the rigorous circumstances of his people.

As a lawyer he was well read and profound. His comprehension was ready and acute, the succession of his thoughts was closely logical, and his argumentative powers clear, vigorous, and incisive. The versatility of his legal genius was remarkable, and he seemed to be equally qualified for eminence in either branch of the profession, and his high sense of duty and devotion to the interest of his clients engaged on all occasions his utmost powers. That distinguished jurist, Hon. A. M. Clayton, speaking of Colonel Walter, says: "He possessed in an eminent degree the two most requisite characteristics of a lawyer—patience and perseverance. He saw his end clearly, and never grew tired in pursuing it. He never saw but one side of a case, and that was his own. He overlooked all obstacles that stood in his way, and drove on to his conclusions regardless of their presence, and if not always successful, he always presented the strongest and most favorable view of his case."

His legal learning and powers of analysis are amply exhibited in his briefs in the Reports of the Supreme Court. These are too well known to the profession to require more than a passing reference. His knowledge was ever at his command, and he was never at a loss for replication or retort.

His stores of precedent were comprehensive, and which the quickness and alertness of his memory and mental operations enabled him to call to his support in every emergency. He was a clear reasoner, an eloquent speaker, and possessed a mesmeric influence over the minds of juries.

As a citizen Colonel Walter had no superior in his sphere of neighborly usefulness. While he was conspicuous in every public assembly, he was the centre of the social circle, and the welcomed and honored guest of every private entertainment. Generous and magnanimous in principle, he was courteous and affable to all classes, and his opinion was deemed the criterion of propriety and expediency.

But the crowning gem in his chaplet of exalted virtues was the jewel of charity, which sparkled more brilliantly than that which blazed in Diomede's crest or flamed in the imagination of

the alchemist. He had always been noted as a man of good deeds ; but it was when that besom of death, with its "woe-delighting train—the ministers of grief and pain," swept over his devoted town, in 1878, that this divine quality of his nature was exemplified with more than mortal glare. When the neighboring town of Grenada had fallen into the arms of the inexorable fiend, and its shrieks reached the gates of Holly Springs, they were thrown wide open to its flying, homeless people, and Colonel Walter was mainly the author of the deed. He opposed all quarantine regulations, and opened his heart, his hands, and his house to the terror-stricken refugees, and when the fatal malady, lurking in the clothes of the strangers, reached forth and seized upon his own people, he counselled and urged them all to flee for their lives ; but, said he, "As for me and my sons, we cannot go ; we must fight this foe ; we must succor our people and administer to the sick, the dying, and the dead." Colonel Walter's family was a remarkably interesting one. He was married, in 1849, to Miss Fredonia M. Brown, daughter of Colonel James Brown, of Oxford, a lady of rare accomplishments and of an exceedingly amiable character. From this marriage were born ten children, nine of whom lived until the visitation of the scourge. He had promptly, at the outbreak of the fever, sent his family away, except his three sons, who partook of the heroic spirit of their father and shared his glorious death.

While in the midst of his charitable labors, Colonel Walter was himself stricken down, on the 19th day of September, 1879, and his three sons followed him within the same week. These noble young men had but recently graduated with distinction at the university of the State, and Frank was a law partner of his father, while Avent and Jimmie were studying for the profession in his office. When Frank, the oldest, was advised to leave, in the beginning of the plague, he replied, "No, I cannot go ; and if I die, let my epitaph be written in the one word—Duty." It is said that it had always been his wish to be a great lawyer, lead a blameless life, and that his death might be crowned with some glorious act. On the fatal morning when he was stricken, before retiring to his home to die, he went in person and selected his burial-casket, observing that as he had lived as a gentle-

man, he wished to be buried as one ; and ere the next day's sun the young man was laid away. Jimmie, who was acting as postmaster of the *city of the dead*, died on the same day, praying that his life might be spared for the sake of his mother and little sisters. Avent, who had fallen a few days before, went away rejoicing at the thought of meeting his mother, his father, and his brothers and sisters in heaven. The pious death of this young man would furnish a theme for a sermon that would echo against the walls of eternity.

Thus perished this noble family, while standing in the breach, while endeavoring to ward from others the shafts more fatal than the arrows of Apollo that twanged their fatal whiz through the Grecian camps on the plains of Troy. Amid all these scenes of terror, when the eyes of Heaven seemed averted from the doomed people, Colonel Walter still bowed to the will of his Maker. On one occasion a young wife who had just lost her husband, and who now saw other members of her family dying, half crazed with grief, wandered through the streets in desperation at her calamities. Colonel Walter met her and endeavored to comfort and soothe her agonizing distress, but in the bitterness of her grief she cried out against the justice of God. His eloquent and only reply was to reverently uncover his gray head, and glancing upward, exclaim, " Though he slay me, yet will I trust him."

No nobler martyrdom was ever recorded upon the pages of history or hallowed the memory of mortal than that which crowned the death of this good man and his three noble and promising sons ; but they have their reward. Let them sleep.

Rest, honored ones, rest from your toil,
Beneath your own dear Southern soil.
With those you died for take your rest ;
Sleep on now with our loved and blest,
Sleep till the just Almighty One
Pronounce on you the sweet " Well done."

# CHAPTER XIII.

## THE CONVENTION OF 1861—THE CONSTITUTION OF 1868—THE PRESENT STATE OF MISSISSIPPI JURISPRUDENCE.

THE BAR—EMINENT LIVING LAWYERS WHO ARE MORE THAN THREESCORE AND TEN YEARS OLD—SAMUEL J. GHOLSON—ALEXANDER M. CLAYTON—ALEXANDER H. HANDY—JAMES M. HOWRY—J. F. H. CLAIBORNE.*

THE Convention of 1861, which withdrew Mississippi from the Federal Union, made no changes in its organic law. The Constitution of 1832 was readopted, with the addition of the following amendment:

"*Be it ordained and declared, and it is hereby ordained and declared*, That the Legislature shall have power to fix the time of holding all elections, and may adjust the terms of office to conform to any changes hereafter to be made, and may fix the time for the commencement of its biennial sessions.

"*Be it ordained and declared, and it is hereby ordained and declared*, That if any part of the present Constitution of the State of Mississippi shall be in conflict with any ordinance passed by this Convention, such part of the said Constitution shall be held to be abrogated and annulled to the extent of such conflict, but no further."

These ordinances, however, contained nothing materially repugnant to the existing Constitution, save the altered status

* It is to be regretted that the Honorable John W. C. Watson failed to respond to the solicitations of the author in regard to data for his biography; for his standing for many years at the bar of Mississippi surely entitles him to a prominent place in the annals of its eminence.

of its political allegiance and the adoption of the Confederate Constitution as the supreme law of the State; and the courts having fallen almost into disuse during the period of the war, no improvement was ingrafted upon the judicial system by legislative enactment.

But the Constitution of 1868 remodelled the entire judiciary of the State, broke up the very fountains of its established order of society, and instituted the era of a new political polity. The High Court of Errors and Appeals, with its elective judiciary, was abolished, and a Supreme Court, consisting of three judges appointed by the Governor, subject to the confirmation of the Senate, was established and clothed with such jurisdiction only as properly belongs to a supreme court. The circuit benches were also required to be filled by appointment, and a separate chancery court was established in each county, with full jurisdiction in all matters in equity and such as pertain to a court of chancery. For this purpose the State was required to be divided into districts composed of not more than four counties, and the chancellors were made appointable in the same manner as the circuit judges and the judges of the Supreme Court; and it authorized the Legislature to select such partisan papers as it might see proper in the several counties as official journals. It established the office of lieutenant-governor, who should by virtue of his office be the Speaker of the Senate; also a commissioner of emigration and agriculture, who should be elected by the Legislature on joint ballot, and substituted a county board of supervisors for the old board of police.

It inaugurated a comprehensive system of public schools, and provided for the appointment of a State superintendent of education, who, with the Secretary of State and Attorney-General, should form a Board of Education for the management and investment of the school funds under the direction of the Legislature. It also provided for a superintendent to be appointed for each county by the State board, but that office might be made elective by the Legislature. It provided for the establishment of an agricultural college, and devoted to its endowment the two hundred and ten thousand acres of land donated to the State for educational purposes by the General Government.

It enfranchised all competent citizens of the United States who shall have resided six months in the State and two months in the county of their suffrage, and required an oath of the electors to support and obey the Constitution and laws of the United States, and of Mississippi, and affixed a clause that no amendment made prior to the year one thousand eight hundred and eighty-five should require a property or educational qualification for any person to become an elector. It prohibited the uttering of private notes and bills as money, and restrained the State from participating in the stock of corporations, and from lending its credit to any private enterprise.

The Revised Code adopted at the session of 1880, and which took effect in November, contains many important changes and decided improvements in the judicial practice of the State. It has abolished the troublesome "writ of error," and provides that causes shall be taken to the Supreme Court only by appeal, and which shall not fail in consequence of any irregularity, if the appellant will perfect his appeal as may be required by the Supreme Court.

Dower and courtesy are abolished, and husband and wife inherit respectively from each other, taking a child's part if there are children, and the whole estate if there are no children by any marriage.

Married women are completely emancipated from all common-law disabilities as to their separate property, and they may deal with it and bind themselves personally as if unmarried, and husband and wife may sue each other. The women are free from every legal restraint except the bonds of matrimony.

Private seals are abolished, and neither their presence or absence affects any instrument either as to rights or remedies. Defect of religious belief does not render one incompetent as a witness.

Persons charged with crime may testify in their own behalf in all cases in which the prosecutor is made a witness, or in which the admissions or confessions of the accused are introduced as evidence.

With these decidedly improved features, and with the exception of a few anomalous provisions in its Constitution placed

there for partisan purposes, and not by the hand of her people, the jurisprudence of Mississippi is, perhaps, as perfect and elevated as could be devised by the wisdom of men, while its bar still partakes of that eminence which has so gloriously characterized it from the first establishment of the State courts. While the past holds out its beckoning visions of glory, the present fires with its living examples the heart of the rising generation, and presents to the gaze of ambition a personification of the brightest memories of other days—days to which these men really belong, but whose spans of life the mercies of a benign Providence have lengthened out and left as the last unextinguished beacons of past greatness—as living landmarks in the track of fame.

In presenting the sketches of the eminent living gentlemen of the Mississippi bar who are more than threescore and ten years of age, the author will, as far as possible, refrain from laudatory observations upon their private character, however much it may be merited, for the reason that he deems it improper, and that it would no doubt be distasteful to the distinguished gentlemen themselves.

## SAMUEL J. GHOLSON.

Samuel Jonathan Gholson was born in Madison County, Kentucky, on the 19th of May, 1808, but emigrated in 1817, with his father's family, to the northern part of Alabama, where his youth was passed. His early education was very limited, being such only as he could obtain from the common country schools of that period; but he possessed a remarkable energy and an ambition which knew no goal but success, and on arriving at the age of manhood he studied law in Russellville, Alabama, under the guidance of Judge Peter Martin. In 1819 he was licensed to practice by the Supreme Court of his adopted State, and in 1830 removed to Mississippi and located as a lawyer at Athens, in Monroe County, where he was married, in 1838, to Miss Ragsdale, a lady conspicuous for her virtues.

In 1833 he was elected to the Legislature of Mississippi, and was continued a member of that body by re-election until 1836, when he was chosen to a seat in the United States House of Representatives, at a special election held by order of the Governor, to fill a vacancy in the Mississippi delegation occasioned by the death of General David Dickson, and was returned for a full term at the regular election in 1837. This latter election was contested by his Whig opponent, Mr. Word, in connection with Mr. Prentiss, who at the same time contested that of Colonel J. F. H. Claiborne, the circumstances of which are presented in the sketch of the last-named gentleman.

The career of Mr. Gholson in Congress was marked with vigor and fidelity. He was vigilant and bold in the defence of the interest of his section, and in the advocacy of the principles of his party, and came repeatedly in conflict with Hon. Henry A. Wise, of Virginia, who, supported by Mr. Bailie Peyton, of Tennessee, both professed fireeaters, sought to play the *rôle* of Mr. Randolph in the House, and not unfrequently attempted to sneer down or intimidate their opponents.

On one occasion, after some rather rough and cutting remarks made by Mr. Gholson, Mr. Wise rose, and pointing to him, said, "If impudence and ignorance constitute a blackguard, *there stands one.*" Mr. Gholson made a scathing reply, and "coffee and pistols for two" was on the tapis, but by the powerful influence of Mr. Calhoun and other mutual friends, a duel was prevented, though the two gentlemen never spoke to each other afterwards.

In 1838 Mr. Gholson was appointed by Mr. Van Buren to the judgeship of the United States District Court for the State of Mississippi, and retained his seat on that bench until the outbreak of the civil war in 1861. While occupying this position an incident occurred which strikingly illustrated the patriotic character of the man. When Governor Quitman was arrested by the United States authorities, charged with complicity in the expedition of Lopez, he was brought before Judge Gholson, who was then holding his court at Jackson, to give bail for his appearance before the District Court at New Orleans, the alleged *locus criminis*, to answer to the indictment; but when the Governor appeared at the bar of the court Judge Gholson ordered him to be released simply upon his promise to appear and answer. He could not consent to require of the Governor of his State any other recognizance than his word of honor. But no stronger obligation could have been exacted from John A. Quitman.

Judge Gholson, having resigned his position, was elected a member of the Mississippi Secession Convention, and participated actively in the proceedings of that body. When the war began he joined as a private one of the first companies raised in his county, and was afterwards chosen its captain. He was wounded through his right lung at the siege of Fort Donelson, and his company having been captured at the fall of that place, he raised another and took the field under General Sterling Price, participating in the battles of Iuka and Corinth, and in the latter engagement was badly wounded through his left thigh.

In the spring of 1863 he was appointed Major-General of Mississippi State troops, and was placed in charge of the protection of the railroads of the State against sudden incursions.

In 1864 he received two serious wounds in an engagement with Denver near Jackson, and on the 27th of December of the same year received a wound in the fight with Grierson's command, at Egypt, Mississippi, which caused him to lose his left arm.

Why Judge Gholson was not appointed to the bench of the Confederate District Court for Mississippi is somewhat inexplicable. It is, indeed, strange that he should have been permitted to descend from a bench which he had so long and so worthily occupied, and, at his age, muster himself into the ranks as a private soldier. He had been a lifelong friend of Mr. Davis, personally, politically, and officially; and the neglect was not in conformity with the known constancy and rewarding policy of the Confederate President. It may have been, however, that this position being necessarily of a sinecure nature during the existence of the war, Mr. Davis, knowing his fiery ardor, desired the military services of Judge Gholson, and which he intended, in time, to properly recognize had not the latter been so disabled by wounds which he received at the outset. But, be this as it may, no complaint escaped the lips of Judge Gholson. He did not halt to inquire about political ethics or the measure of his own deserts, but sought only the efficiency of action, and desired only that capacity in which he could best serve the interest of his country.

At the termination of the war General Gholson resumed the practice of his profession; but the people again demanded his services, and in 1866 he was elected to represent his county in the lower branch of the Legislature. In 1878 he was again elected to a seat in that body, and was chosen Speaker of the House.

As a lawyer, as a legislator, as a judge, and as a soldier, the career of General Gholson has been brilliant and exemplary. His predominant traits are a sound judgment, an untarnishable integrity, and an indomitable resolution. His perception is active and penetrating, and his analytical and synthetical powers constitute him a dialectician of the first order. As an orator his style is plain, logical, and terse. He is a profound lawyer, and loves his profession with the fervor of a devotee. He is still practising in Aberdeen, with the vigor of much younger years.

With a constitution which neither ball nor bomb nor blast could apparently shake, his mind has kept pace with his physical vigor, and while old age has planted its tracks upon his brow, the weight of years seems to have no burden for his brain. Looking back with no regrets upon the past, he rejoices in the hopes which he has lived to see burst forth upon his country through the clouds which so long hung like a pall of darkness over it. His patriotism is as sacrificial as that of Regulus, as prompt as that of Cincinnatus, as faithful as that of Franklin, and as ardent as that of Washington; and when the great key-note of time shall sound the requiem of this grand old man, none will go up before the great High Court with a brighter record of all that constitutes the upright judge, the faithful counsellor, the useful citizen, the true friend, and the honest man.

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## ALEXANDER M. CLAYTON.

Among the distinguished gentlemen whose talents have adorned the bench and bar of Mississippi, there is no one whose career is more conspicuously identified with its jurisprudence than the venerable gentleman whose name introduces this memoir.

Alexander M. Clayton was born in Campbell County, Virginia, on the 15th of January, 1801. His opportunities for obtaining an education were confined to the ordinary schools of the country; but possessing an innate vigor of high resolve, and actuated by a spirit of lofty purpose, on arriving at his majority he entered a law office in the town of Fredericksburg, and after a diligent preparation was admitted to the bar in 1823. He then located himself and commenced practice at Louisa Court-House, where, in 1826, he married Miss Thomas, a lady of culture and refinement, and a descendant from ancestors of Revolutionary repute. His early professional prospects were flattering, but the *lucubrationes* of a young lawyer at the bar of



Mrs. McClintock

Virginia at that period were defined by an arbitrary custom, and often painfully prolonged; and chafing under restraints which prevented the immediate and full development of his talents, Mr. Clayton sought a more ample and less ceremonious field, and removed to Tennessee and settled at the flourishing town of Clarksville. Here he met many distinguished lawyers, such as Hon. Cave Johnson, Judge William Brown, Judge William Turley, and others, by whom the talents of the young Virginian were immediately recognized, and they gave him a kindly and friendly reception. He had been but a short time in Clarksville before he was employed in some of the most important cases at that bar, and established a reputation which placed him in the first rank of his profession. He then formed a copartnership with Mr. Turley, which continued as one of the leading law firms in that portion of Tennessee until the latter was elevated to the bench. But in the midst of his professional triumphs Mr. Clayton met, in 1832, with the greatest of reverses in the loss of the devoted wife who had espoused his early fortunes, encouraged his youthful hopes, and inspired his professional ambition. This event was a severe shock to his sensitive and affectionate nature, and seemed for a time to unsettle his plans, to mar his hopes, and to cast a settled gloom over all his prospects. But, fortunately, a circumstance intervened which promised some relief to his mind and drew him away from the scenes of his sorrow. He was appointed by General Jackson, then President of the United States, to the position of United States Judge for the Territory of Arkansas. He held this office, however, for only one year, and then resigned and returned to Clarksville. While in Arkansas he had occasion to visit the country bordering on the Mississippi River, where the cholera was then raging with fatal malignity, and having contracted this terrible disease in its most virulent form, his constitution was prostrated to such a degree as to indicate a settled infirmity fatal to the performance of his professional duties. But after a protracted state of physical debility the healthful breezes and inspiring scenes of his early triumphs restored his health, and now catching the enticing reports of the exceeding fertility, the scenic beauty, and flushed prospects of the country which

had been lately ceded to the United States by the Chickasaw and Choctaw Indians in Northern Mississippi, he removed to this State in 1837, and settled on a plantation near the present village of Lamar, in Marshall County. His agricultural operations were successful. The forests, which had never echoed but to the whoop of the Indian, were soon felled by the slaves which he brought with him from Tennessee, and bountiful crops were the reward of his judgment and enterprise. He, in the mean time, however, relaxed none of his energy and devotion in the pursuit of his profession. He found in this State a vast field of litigation, and entered immediately upon a lucrative and growing practice. The loose system of banking establishments, their numerous failures, and the efforts made to fix liability on the individual members of these corporations, have already been referred to in this work as fruitful sources of litigation at that period in Mississippi.

In 1842 Mr. Clayton was elected to the bench of the High Court of Errors and Appeals to fill a vacancy occasioned by the resignation of Mr. Justice Trotter, and in 1844 was re-elected for a full term. His decisions are remarkable for profound learning, and for the many novel and important principles which they established in our jurisprudence. They are always clear and penetrating, embrace every hinging feature, and present a lucid exposition of every point necessary to disclose clearly the rights of the parties and the equity involved in the dispute.

Whilst upon the bench of the High Court, Judge Clayton delivered a series of opinions involving the question of the limitation of estates in our jurisprudence. These opinions, which met with the concurrence of the other judges, inculcated the doctrine that the Mississippi Statutes had so far modified the common law as, of themselves, to furnish rules amply sufficient to determine all questions of that character without recurrence to the artificial and technical principles of the English law.

And notwithstanding that, after his retirement from that bench, the High Court in the case of Jordan *vs.* Roach overthrew the doctrine which Judge Clayton had laid down, the new Code of Mississippi, 1880, by formally abolishing the rule in Shelley's case, and adopting provisions in support of his doctrine,

confirms the wisdom of his efforts to emancipate our jurisprudence from such antiquated technicalities.

A striking parallel between his manner of treating a question and that of Judge Sharkey is presented in their separate opinions in the case of Montgomery *et al. vs.* Ives *et al.* (13 S. & M., 161). Their conclusions in this case are identical, but reached upon grounds somewhat different, and which involve a conflict in the legal construction of historic data.

Judge Clayton's term upon the High Bench expired in 1851, and he was a candidate for re-election ; but as he had taken strong grounds for the doctrines of the States Rights party a short time before in the Nashville Convention, and in the Mississippi Compromise Convention, held in the early part of 1851, as well as during the canvass, in which an address which he published to the people constituted mainly the platform of the campaign, he shared the defeat of his party and returned to a vigorous practice of his profession, in copartnership with Hon. J. W. C. Watson, of Holly Springs.

On the election of Mr. Pierce to the Presidency he tendered to Judge Clayton, without solicitation on his part, the position of consul to Havana. This office he accepted, and repaired to the island of Cuba. At that time there was considerable excitement in the Southern States, caused by a report raised, no doubt by filibusters, that a treaty had been formed between France, England, and Spain for the purpose of "Africanizing Cuba."

Judge Clayton received instructions to investigate the matter and ascertain the truth as to the existence of such a treaty, and he entered zealously upon that duty. Having availed himself of every source and means of information, he became satisfied that the alarm was false, and his report to his government to that effect calmed all apprehension in regard to it, and the strict enforcement of the neutrality laws during his residence in the island put an end to the projects of the filibusters. It was not long, however, before the failure of his health and uncongeniality of the situation caused him to resign and return to his home in Mississippi. But being attracted by the rapid growth and commercial prosperity of Memphis, he soon after removed

to that city and formed a copartnership with Judge Archibald Wright and D. M. Currin.

This firm enjoyed a large patronage ; but Judge Clayton had not been long in Memphis before the unmistakable omens which began to flit across the political skies stirred his patriotic anxieties. He was a member of the Charleston Convention, and of that subsequently held at Baltimore, and when he saw the dark shadows of the approaching storm gathering along the horizon he stepped boldly into the arena of action. He returned to Mississippi, and in 1861 was chosen a delegate from Marshall County to the convention which withdrew Mississippi from the Federal Union.

In this body, as chairman of the committee appointed for that purpose, he presented an able address setting forth a declaration of the immediate causes which induced and justified the secession of the State of Mississippi from the Federal Union. He was also chosen one of the seven delegates to the Montgomery Convention, and was subsequently ordained to a seat in the Provisional Congress of the Confederate States. His services during this period were of marked efficiency. His great legal learning, calm and conservative judgment, and unswerving fidelity to the interest of his people, rendered his counsel at once weighty and influential.

When the Confederate Government was inaugurated Judge Clayton was appointed to the bench of the Confederate District Court for Mississippi, and held that position until the close of the war. There was during this period, of course, but little civil business before his court, and only one point of a general interest in the laws of war was decided by him, which was, that where the Government was powerless to protect, it had no power to punish.

After the close of the war he was appointed, on the death of Judge Trotter, to a seat on the circuit bench, and was elected afterwards for a full term, but was removed by Governor Ames in consequence of his inability to take what was called the *iron-clad oath.*

He has always taken great interest in the cause of education and in all public enterprises. He was made a trustee of the

State University upon the establishment of that institution, and still maintains that relationship. He was also a chief promoter of the construction of the Mississippi Central Railroad, and was for several years one of its directors.

His legal attainments are comprehensive and profound, and as a constitutional lawyer his abilities are pre-eminent.

Judge Clayton has always been a devotee of the pure and fundamental principles of the American Constitution, and in his legal eye the decision of the United States Supreme Court in the Dred Scott case was a just and true vindication of Southern rights, and triumphantly repellant of the assaults of Northern fanaticism ; but when he saw the doctrines laid down in that case rejected, the courts contemned, and the Constitution itself repudiated, he saw no remedy for the South but in secession. He maintained the spirit of constitutional law with great ability and fervor, but the wisdom and experience of Nestor could not avert the disastrous results of the quarrel of Achilles and Agamemnon, and Judge Clayton retired from the scene amid the wreck and ruin of his country ; but now, in the eightieth year of his age, he has lived to see the smouldering ashes cleared away, the past, save the remembrance of its grandeur, fast sinking into oblivion, and his country putting on the robes of a new prosperity, rising

> Like Thebes, or some razed city, from its tomb
> In beauty, as if never marred by shot or bomb.

And looking back through the checkered vista of fourscore years, he has seen the blossom and the fruit of its greatness, and the destruction of all save those eternal principles which reside only in the mind of integrity and the heart of the patriot.

In 1879 he lost his second wife, with whom he had lived in the warmest affection and in the bonds of unbroken harmony for more than forty years, who was to him a true and devoted friend.

He now resides at his home near the village of Lamar, in Benton County, Mississippi, in quiet seclusion, having withdrawn from all public affairs, and if the good wishes of his country and the esteem of his fellow-citizens can soften the bed of death, his last rest will be upon a couch of down.

## ALEXANDER H. HANDY.

The subject of this sketch was born in Somerset County, Maryland, on the 25th of December, 1809. He was well educated, and, having obtained his license as a lawyer, removed to Mississippi in the year 1836. In January, 1837, he was admitted to the bar of the High Court of Errors and Appeals, and entered at once upon a most successful professional career.

In 1853 he was elected to a seat upon the bench of the High Court over Judge William Yerger, who was then upon the bench, but who had rendered himself unpopular with the dominant party in consequence of his opinion in the case of Johnston *vs.* The State, in which he maintained the liability of the State for the payment of the bonds of the Union Bank. Judge Handy held this office until October, 1860, and was then re-elected without opposition.

In 1865 he was again elected a judge of the High Court over George L. Potter, and in January, 1866, was appointed Chief Justice of Mississippi. In November, 1866, he was re-elected without opposition, but resigned the position on the 1st day of October, 1867, by letter to the Governor, in consequence of the court's being placed by the Federal Government in subordination to the military power of the United States.

He then removed to the city of Baltimore and resumed the practice of his profession, but was soon after appointed Professor of Law in the University of Maryland, which position he held until 1871, when he returned to Mississippi and resumed the practice of law at Jackson, and in October, 1877, was admitted to the bar of the Supreme Court of the United States.

Judge Handy has always been a firm believer in the doctrine of States rights, is immovably Southern in his views, and favored secession both as a right and a necessity. He was appointed by the Governor of Mississippi, in December 1860, as a commissioner to the State of Maryland in relation to

the political crisis then existing; and failing in his efforts to communicate with the Legislature of that State, in consequence of the refusal of its Governor to convoke that body, Judge Handy addressed himself directly to the people, and in his speech delivered at Princess Anne, on the first day of January, 1861, presented the subject of secession—its right and its reason—in a lucid and elaborate manner. He depicted, with the ken of inspiration, the policy and purposes of the party about to take possession of the Federal Government, and showed that the principles announced by the President-elect and the leaders of his party were subversive of all equality in the Union, destructive of the rights of the Southern people, and virtually a revolution of the Government. But, although the people of Maryland were aroused by his presentment of the situation, they could do nothing in view of the action of the State Government.

In 1862 Judge Handy wrote and published a pamphlet entitled "Secession considered as a Right in the States composing the late American Union of States, and as to the Grounds of Justification of the Southern States in exercising the Right." In this treatise he thoroughly and ably discussed the fundamental principles of the American Government, the conditions upon which it was created, and its interpretation by the authors of the *Federalist*. The work is a profound and instructive constitutional argument, which every lawyer should read who seeks a thorough knowledge of the history, character, and interpretation of the Constitution of the United States.

Judge Handy is a fluent speaker, a polished writer, and an interesting companion. The qualities which so eminently fitted him for a judge designated him for other marks of distinction, and in 1861 the title of LL.D. was tendered him by the faculty and trustees of the University of Mississippi, but his modesty impelled him to decline the honor; and in 1867, on his resignation as a judge of the High Court, he was offered the position of Professor of Law in the same institution, but that was also declined.

As a lawyer Judge Handy is learned and profound, and his legal learning is united to a character of unspotted integrity, and is blended with a purity which eminently fitted him for the

bench. As a judge, his uniform urbanity, together with his able and dignified manner of administering justice, excited the admiration of the bar. His decisions are searching and comprehensive, clear and logical in enunciation, and exhaustive in their elucidation of the rights of the parties. His opinions are numerous, and enter largely into the composition of sixteen volumes of the Mississippi Reports, from vol. 26 to vol. 41, inclusive.

They are characterized by an independence of thought and a self-reliance which bespeak the possession of resources rarely acquired, and a fertility of legal genius which only a clear and well-defined sense of right and wrong could inspire, and which only talents of the highest order could develop.

These decisions constitute for his fame a far more splendid and enduring monument than all the pillars and shafts that mechanism could rear, and are records more glorious than all the volumes of praise and adulation that history could produce. Through them his name is inscribed luminously and indelibly upon every title-deed, every tenure, and every relation of the society of Mississippi.

Judge Handy now resides in Canton, Madison County, and is still engaged in the practice of his profession.

## JAMES M. HOWRY.

James Moorman Howry was born in Botetourt County, Virginia, on the 4th of August, 1804. His ancestors came from Europe prior to the American Revolution and settled in Virginia and Pennsylvania. His father removed to Tennessee in December, 1811, and located near Rogersville, where the subject of this sketch was reared and educated. His education, though not finished, was solidly moulded in a classical academy in that town, and was steadily enlarged by his studious habits and inquisitiveness of mind.

He was an industrious and energetic boy, and he even now takes great delight in boasting of the thrifty and vigorous habits of his youth. At an early age he was placed in the mercantile house of Francis Dalzell, in Rogersville, where he acquired that capacity for business which has characterized his life as one of great usefulness and activity. He was subsequently employed, for several years, in the office of the chancery clerk of his county, where he obtained considerable knowledge of the functions of equity, and imbibed a fondness for forensic proceedings and an ambition for legal distinction which finally induced him to launch into that sphere and decided the fortune of his life.

But not yet supplied with sufficient means for his purposes, he conducted for several years a mercantile house for one Colonel George Hale, and during the latter part of this time devoted his spare hours to the study of law. He then entered the law office of Governor Peter Parsons, of Rogersville, and for two years applied himself diligently to a thorough preparation for his chosen profession. His studies were interrupted only by the ardor with which he embraced the martial rage excited by the war of 1812, and which had not yet subsided. He abandoned the study of law and entered a military academy, and at the age of seventeen was elected first lieutenant of a company,

at the age of nineteen was made captain, at twenty-two a major, and then colonel commandant.

Resuming the study of law, he obtained license and practiced one year at Rogersville, and then removed to Middle Tennessee, where he rose so rapidly in his profession that at the ensuing convention he lacked but one vote of being nominated for Attorney-General of the twelfth Tennessee district, to which office he was afterwards appointed by Governor Carroll. He was for several years clerk of the House and Senate of the Tennessee Legislature, and during the performance of these duties the members of the bar at the courts in which he practiced voluntarily attended to his cases.

He removed to Mississippi in the year 1836, and located in Oxford, where he has since resided, and is now the oldest inhabitant of that place. He soon attained a large and lucrative practice at the bar of his adopted State, and was one of the most successful lawyers of that period.

In 1840 he became the Democratic candidate for the office of Circuit Judge, but the unpopularity of Mr. Van Buren in Northern Mississippi, whose cause he espoused in the canvass, promoted the election of Judge Huling, who was a supporter of the hard-cider ticket. This election was held to fill a vacancy, and in 1841, at the regular election, Colonel Howry was elected to the circuit bench for a full term, his opponents being Alexander M. Clayton and Judge Huling. His first court was to be held at Holly Springs, in December. His commission had been duly forwarded by Governor McNutt and entered upon the records of the court, and he had taken his oath of office. But in the mean time Judge Huling claimed that, notwithstanding the specialty of his election the preceding year, he was entitled by its virtue to retain his seat during the full succeeding term, and when the day for holding the court at Holly Springs arrived he ascended the bench, it is said, before he had partaken of his breakfast, and having secured the services and support of a deputy sheriff of his political faith, caused him to proclaim the court to be open.

The clerk, who was a Howry man, refused to serve him, and in this posture he remained until ten o'clock, at which

time Judge Howry made his appearance, the high sheriff opened the court, and the clerk seated himself at his desk. The court-house was filled with excited people, who were divided in their sympathies. Judge Howry, pointing to Judge Huling, ordered the sheriff to take that man away. The sheriff replied that while he believed Judge Howry to be the rightful incumbent it was not a matter resting in the power of his decision, and refused to hurl Judge Huling from the bench; and after fining each other alternately several times, the two judges adjourned respectively, Judge Howry until two o'clock in the afternoon, and Judge Huling until nine o'clock of the next morning. In the evening Judge Howry's court met, pursuant to the morning's adjournment, and he adjourned again until half past eight o'clock of the next day, which placed his reoccupation of the bench a half hour in advance of his rival, and procured him relief from any further interruption.

The Huling party then proposed that a case should be made up for the decision of the High Court, which was agreed upon and sent up under the style of Lemuel Smith *vs.* Halfacre. The docket was then cleared by continuances, and the mutual consent of counsel to wait until the title to the judgeship should be decided. The case was called up before the High Court in January, 1842, and was decided in favor of Judge Howry.

Here I cannot refrain from noticing an event of a personal nature that occurred soon after he ascended the bench.

In 1843 Judge Howry was holding court, by interchange with Judge Adams, at Athens, in Monroe County, and while sitting upon the trial of a negro for murder a fierce controversy arose between General Reuben Davis and Judge Frank Rogers in regard to the competency of a juror. The judge promptly decided the question, and took occasion to admonish the counsel of their wrangling; and when Mr. Davis, in the youthful ardor of a fiery temperament, continued to pursue the quarrel with Mr. Rogers, the judge fined him fifty dollars, for which Mr. Davis attacked him in the hall as soon as the court was adjourned and demanded to know why he had been fined. The judge replied that he did not, out of court, give explanations of his action on the bench; upon which Mr. Davis struck him a slight blow in

the face with his open hand. The judge, casting his eyes around, discovered a carpenter's hammer lying on a shelf near by, and, seizing it, gave his antagonist a blow that caused a severe rent across the crown of his head. Mr. Davis, in the mean time having drawn a small knife, was cutting vigorously at the judge's jugular, when they were separated, bleeding from mutual wounds whose marks they bear to this day.

On the next morning Judge Howry informed the lawyers that he would hold court for them no longer, for the reason that some of them stood by and suffered a visiting judge to be put in jeopardy of his life, and by one of their own number. It was accordingly adjourned.

General Davis, in speaking of this affair to the author, said, laughingly, that when his friend Howry failed to argue his notions of law into his head, he tried to hammer them in. The matter was, however, adjusted, and for thirty-seven years the two gentlemen have been fast and mutual friends, and many acts of kindness and friendship have passed between them.

On the establishment of the University of Mississippi, in 1844, Judge Howry was appointed one of the trustees of that institution, and his services on that board were acknowledged by his colleagues to be of the highest efficiency, and their records teem with resolutions and tributes to that effect.

His energy and attentiveness in superintending the erection of the buildings, in putting the institution into operation, and his continued services in promoting its interest as chairman of the executive committee and afterwards as secretary and treasurer of the board of trustees, are well known to the alumni and the country, and connect his name inseparably with the establishment and fortunes of the institution. His connection with it continued until it fell with the State under the control of the Republican party, when the stanch Democracy of Judge Howry precluded his reappointment by Governor Alcorn, and he was forced, with his colleagues, to give place to henchmen of the Republican Governor.

In 1857 he was nominated by a convention of the Democratic party of his county, and elected to a seat in the State Senate, in which he served two terms, and distinguished his legis-

lative career by the zeal and ability with which he advocated the interest of the university.

He has always been an active promoter of all public enterprises, and has devoted much of his time to the advancement of the interest of the town and county of his residence. Full of generosity, charity, and personal enterprise, he has been an active patron of every meritorious cause.

His position in the Masonic fraternity is well known throughout both Tennessee and Mississippi. He presided for many years over the lodge and chapter, was Grand Master of Mississippi, and Grand High Priest of the chapter.

The long career of this distinguished gentleman furnishes one continued and brilliant example of a lofty and well-directed ambition, an incessant round of duty vigorously and conscientiously performed—a pathway paved with industry and enterprise, and glowing with beneficence and honor.

As a lawyer Judge Howry is noted for his practical genius and accurate comprehension of fundamental principles. His knowledge of the law extends to a depth which can be attained only by the joint exercise of diligence, temperance, and talent; and these qualities, joined to kindness of heart and gentility of manners, disclose the cause of his successful life.

His strict attention to business, his stern integrity, and the faithful and ardent application of his time and talent to every trust reposed in him by his fellow-citizens, gained for him their admiration and esteem—the highest earthly rewards that can be bestowed upon man; and, laden with these, he has borne them, untarnished and undiminished, down to the hoary verge of fourscore years.

## J. F. H. CLAIBORNE.

While this distinguished gentleman was never a practitioner at the bar of Mississippi, he occupies a place so conspicuous in its political and literary annals that the omission of his biography would stamp the seal of incompleteness on any work professing to treat of Mississippi eminence.

J. F. H. Claiborne was born at Natchez, in the Mississippi Territory, in the year 1809. He is the eldest son of General F. L. Claiborne, who devoted the best years of his life to the military service of the United States, and died in 1815 from the effect of wounds that had never healed. At the age of fourteen years he was sent to his relations in Virginia to be educated, and four years afterwards entered the law office of his distinguished kinsman, Hon. Benjamin Watkins Leigh, of Richmond. While there he was seized with a slight attack of hemorrhage which alarmed his friends, and it was deemed advisable that he should return to the milder climate of Mississippi. He resumed his studies in the office of Griffith & Quitman, at Natchez, but was soon compelled to abandon them and go to sea for his health. He repaired to Cuba, and spent the winter on the south side of the island. On this trip, and during his residence there, he chanced to have for his companion a young man in delicate health who afterward became distinguished as the famous James Bowie, the inventor of the Bowie knife, the hero of the great rencounter at Natchez, and finally a martyr of the Alamo, where he was engaged in initiating the great scheme of Spanish land claims which afterward produced so much litigation in Louisiana. After having resided six months in Cuba, Mr. Claiborne returned to Virginia and entered the law school of General Alexander Smyth, one of the most eminent jurists of that commonwealth, at Wytheville, and in less than twelve months, having been examined by Judges Johnston, Allen, and Saunders, he was duly admitted to the bar.

On his return to Natchez he found the people greatly agitated by the contest between Adams and Jackson for the Presidency, and he was prevailed on, by the Jackson executive committee, to take charge of the editorial columns of the paper then published by the venerable Colonel Andrew Marschalk. This step, and delicate health, again diverted him from the pursuit of his profession, and from that time his talents were devoted to politics.

Before he had attained his majority he was elected to represent his native county in the Legislature, and was twice reelected by large majorities. He then removed to Madison County, and while in his twenty-fourth year was nominated by acclamation in the first Democratic convention that had assembled in the State, as a candidate for Congress for the State at large. Mr. Claiborne was not present at the convention. Hon. Daniel W. Wright, of Monroe County, at that time one of the most popular men in the State, and afterwards judge of the High Court, was likewise nominated by acclamation, but declined the candidacy, and Benjamin W. Edwards, of Hinds County, a man of high character and fine talents, was substituted. This was the last year of General Jackson's administration, and the people of Mississippi were nearly equally divided between the adherents of Mr. Van Buren, of New York, and Mr. Hugh L. White, of Tennessee, who were candidates for the Presidency.

Messrs. Claiborne and Edwards were for Van Buren. Their opponents on the White ticket, in alliance with the Whigs, where James C. Wilkins, of Natchez, and General David Dickson, of Hinds County. Though the nominees were thus put forward as political antagonists, representing different parties or factions, yet it seems that the people did not so regard them, and after a thorough canvass by the several candidates, during which Mr. Claiborne addressed the people in every county in the State, and often at every precinct in the county, the State was carried for Mr. Van Buren by a small majority, and General Dickson (White) and Mr. Claiborne (Van Buren) were elected to Congress by large majorities. The canvass, though animated, was conducted in a spirit of great cordiality, and the four gentlemen maintained for each other the highest respect and feel-

ings of the warmest friendship. Before Congress assembled General Dickson died, and was succeeded by Hon. Samuel J. Gholson, of Monroe County, who was chosen at a special election.

Mr. Claiborne stood high in the confidence of his party at home, and in Congress was assigned to a prominent committee, and took an active part in the debates, more or less acrimonious, that occurred at that exciting period. On one occasion, when Mr. John Quincy Adams attempted to present a petition from slaves in Virginia, and the Southern representatives spontaneously retired from their seats and assembled in a committee-room to discuss the situation, Mr. Henry A. Wise, of Virginia, being in the chair, a set of resolutions, to be presented on the next day in the House, having been adopted, it was moved that the chairman of the meeting be requested to present them. Upon which Mr. Claiborne took the floor and said that he arose to protest against the motion. That he represented a constituency that owned more slaves than any other represented in the meeting, and that he would never consent that the gentleman from Virginia, who habitually opposed their interests, and often voted with Mr. Adams and the abolitionists, should be the organ of Mississippi.

At which Mr. Wise, greatly excited, pointed his finger towards Mr. Claiborne and said, "You shall hear from me to-night."

At this moment General Glasscock, of Georgia, in a voice that was heard far beyond the chamber, cried out, "I agree with the gentleman from Mississippi. The chairman of this meeting shall not represent Georgia in the House."

By this time there was great confusion, and the meeting was about to be resolved into a scene of general hostilities. Messrs. Claiborne and Glasscock had already reached the door when Mr. Calhoun, who had left his seat in the Senate to attend the meeting as a deeply interested spectator, intercepted them and prevailed on them to remain, and Mr. John M. Patton, of Virginia, a moderate and conservative man, was designated, by unanimous consent, to present the resolutions. That Mr. Wise, who was both intensely brave and vindictive, never carried out

his threat was due, most probably, to Mr. Calhoun, and to the necessity for unity at that juncture.

Mr. Claiborne subsequently again came in collision with Mr. Wise and Colonel Bailie Peyton, of Tennessee, who were members of a select committee to investigate the management of the deposit banks, and were evidently seeking to implicate the administration in some illegitimate transactions. One of the witnesses, Mr. Reuben Whitney, proved somewhat refractory, and refused to be intimidated by the overawing attitude of his interrogators. He declined to answer a question which he considered disrespectful and improper, and at the same time threw his arm behind his back. Mr. Peyton cried out, "*If you move your arm one inch I shall shoot you in your tracks.*" The committee immediately adjourned, and on the next day one of its members, Mr. Lincoln, of Massachusetts, moved that Whitney be arrested and brought to the bar of the House.

Mr. Claiborne moved to amend by adding, "And that he be allowed counsel when brought to the bar," and supported the amendment in an elaborate speech, to which Mr. Lincoln, Mr. Peyton, and others responded, and to whom Mr. Gholson, of Mississippi, replied in an able and pointed argument. The amendment was adopted. Whitney was in due time acquitted of the contempt, and it was established that neither when before the committee or at any other time in his life had he ever worn arms, and was therefore perfectly innocent of the alleged attempt to assassinate the investigating committee, or any one of them. It appeared, however, from the language used by Mr. Peyton to the accused, that the honorable gentleman himself was armed. Mr. Claiborne had some peculiar claims on the friendship of Mr. Peyton, but it is said that for that action the latter never forgave him, and from that moment manifested towards him a studied estrangement.

About this time one of the greatest questions that had ever agitated the country grew out of the insolvency of the United States Bank, and of most of the State banks, the apparent failure of the whole system, and it became necessary to find some agency for managing the financial affairs of the Government. President Van Buren determined on what was known as the In-

dependent Treasury plan, or a complete divorce of the Government from the banks. To this end he called a special session of Congress, to assemble on the first Monday in September.

The terms of the Mississippi members had expired, and the regular election would not be held until the first Monday in November. Governor Lynch therefore issued his proclamation for a special election of members of Congress, to be held on the third Monday in July. The Governor's idea was that the members elected under his proclamation were to serve only for the special session, but the people generally believed, and the press for the most part insisted, that the election could not be for a less period than two years, the constitutional term. The vote stood: Claiborne, 11,203; Gholson, 9921; Prentiss, 7143; Acee, 6691.

When Congress assembled, the right of the Mississippi members was challenged on the first day of the session, by General Mercer, of Virginia, one of the leaders of the Bank party, and the question was referred to the Committee on Elections, composed exclusively of distinguished lawyers, who in due time reported that Messrs. Claiborne and Gholson had been duly elected members of the Twenty-fifth Congress.

By this time the Bank party in Mississippi—then powerful in numbers and talents, and controlling most of the capital of the State, with the power to favor or to crush all who were indebted to them, and with one of their party in the executive chair wielding the official patronage, and influenced by urgent advices from Washington and the commercial centres of the North—determined to oust the sitting members if they could.

They therefore assumed that the July election was for the special session only, and Messrs. Prentiss and Word were induced to take the field and make a thorough canvass of the State, with all the machinery of the banks in operation to aid them. They canvassed without opposition. Messrs. Claiborne and Gholson were in their seats, voting steadily with the administration, at a time when parties were nearly equally balanced, and their votes on the vital questions of the day could not be spared. The sitting members were disposed to resign their seats and return to canvass the State, but at a confidential con-

ference of all the leading friends of the administration in both Houses of Congress it was determined that it was their duty to remain and cast their votes for the important measure impending, in which the Government and the party had staked their fate. At the same time a caucus of the Democratic members of the Mississippi Legislature, with many eminent citizens from all parts of the State, transmitted to them resolutions to the same effect. The election was held in November, and the vote stood: Prentiss, 13,651; Word, 12,340; Claiborne, 6258; Gholson, 6032. The two latter, however, were not candidates. The votes they received were spontaneously cast by ardent partisans, but the great body of their friends abstained from voting, considering them already elected for the entire term.

When Messrs. Prentiss and Word presented themselves, they found the seats they claimed occupied. The question, of course, had to go to the Committee on Elections, who again reported substantially as before. It was then that Mr. Prentiss made his celebrated speech, and proved himself the most eloquent man in the United States. Both of the sitting members were prevented by sickness from making a reply. Mr. Gholson, who was fully capable of arguing a question of law or fact with any adversary, was prostrated with typhoid pneumonia, and Mr. Claiborne, who had few superiors in the arts of rhetoric and in eloquence, was suffering from a violent attack of hemorrhage, with which he was seized in the room of the Committee of Foreign Relations, occasioned, no doubt, by the excitement of the contest, from which he has never entirely recovered, and has never since then ventured to deliver a public address.

After a protracted and violent contest, in which every man mustered under his party banner, the House reversed its decision as to the sitting members, but at the same time refused to allow the claimants their seats, and the whole matter went back to the people. Messrs. Prentiss and Word renewed the canvass with great activity. Mr. Gholson, disgusted, retired from the contest, and Mr. Claiborne went to Havana to recover his health. The people, however, put forward his name, and with him General Davis, of Marshall County. The vote stood:

Prentiss, 12,722; Word, 12,077; Claiborne, 11,776; Davis, 11,346.

This terminated the public career of Mr. Claiborne. He resolved never again to ask or accept office, and though many opportunities have offered it, he has adhered to his resolution. He attached himself to the press, and continued to maintain with unabated vigor the doctrines of the Democratic party on all the issues of the day.

During all the excitement of this contest the relations of the parties had been perfectly friendly, but it was the fate of Mr. Claiborne to come once more in collision with his celebrated adversary, and under circumstances which did not result so amicably.

In 1842 Congress established a board of commissioners to examine and adjudicate the claims of the Choctaws under the fourteenth article of their last treaty with the United States. Mr. Claiborne, feeling a deep interest in the Indians, was appointed president of this board. These claims, if allowed, would have covered the best lands in many of the new counties. The claimants were required to swear that they had never disposed of their claims. But in the progress of the investigation it was found that their claims had been purchased for a very inadequate consideration by a company which extended through several States and comprised many influential men, some in high official position. Mr. Prentiss had been engaged as attorney for the company, on a contingent fee of $100,000, and attended the meetings of the commissioners. At one of these meetings Mr. Claiborne exposed the whole transaction, and avowed his determination to submit the matter to the authorities at Washington. This occasioned a violent scene of criminations and recriminations. Mr. Prentiss and his friends hastened to Washington, and were there confronted by a printed *exposé* of the case from the pen of Mr. Claiborne, which lay on the desk of every member of Congress. Mr. John Bell, of Tennessee, moved to refer the matter to a select committee, which would have been appointed by the Speaker, who had an interest in the claims. Mr. Thompson, of Mississippi, chairman of the Committee on Indian Affairs, moved to refer it to his committee. After

a bitter fight his motion prevailed, and the plan recommended by Mr. Claiborne was adopted—to pay the Indians neither land nor money, but to allow them the value of their claims, remove them west, fund the money, and pay them the interest annually. Thus the great speculation ended, but the exasperations its failure occasioned lasted for many years.

In 1844 Mr. Claiborne moved to New Orleans and became editor of the *Jeffersonian*, the State journal, which was published in both French and English, and of the *Statesman*, in English and German, devoting twelve hours daily to these enterprises. When Mr. Pierce, between whom and Mr. Claiborne there existed a long and close intimacy, was nominated for the Presidency, Mr. Claiborne was induced by the Hon. John Slidell and the Hon. E. La Sere to become the editor of the *Louisiana Courier*, the oldest paper in the city. Mr. Pierce warmly invited him to Washington, to fill a prominent position there, or go abroad; but his health being extremely precarious, he retired to the sea-coast of Mississippi and there engaged in the culture of sea-island cotton, where he remained as a planter until the outbreak of the war.

For the last three years he has resided near Natchez, engaged in writing the "History of Mississippi." Colonel Claiborne is the author of several biographical works of great merit, and his history will no doubt take its place as a standard in the great historical chain. He is a writer of remarkable fluency, and his style is chaste and elegant. He is a habitual student, and his memory is stored with recollections of the last fifty years. His literary attainments have placed him in the ranks of the first scholars of the age. The University of Mississippi has conferred upon him the degree of LL.D., and he is a member of the Historical Society of Wisconsin, of the Historical Society of Alabama, and has recently been elected Fellow of the Royal Historical Society of London.

His life is an exemplary model of temperance and moral rectitude. He is not attached to any church, and is by no means a saint or a puritan; but he never attends places of amusement; has never been at a public dinner or a political convention; never entered a gambling-house or race-course; never

played a game of billiards, chess, or backgammon; never carried a bowie-knife or pistol; never smokes or chews tobacco; never uses an oath; is strictly temperate; never was a witness in court, and never had a lawsuit. Yet, while he rarely goes from home, no man enjoys society more, and he is devoted to his friends. He often remarks that one of his greatest consolations is that he has lived to become reconciled to every one with whom he came in collision, and that he will meet them as friends in the spirit land. His eye fills with tears when he refers to his last interview with the dying orator, S. S. Prentiss, which was brought about by their mutual friend, the late Governor John J. McRae.

Colonel Claiborne adheres to his ancient political faith, but blames both sections for the war—the North for its unconstitutional encroachments, the South for precipitate action and want of statesmanship in not providing for the gradual emancipation of the slaves, thus reconciling itself to the civilization of the age and acquitting its conscience of a great crime. He considers that the old Federal Union with the reserved powers lodged in the States was extinguished by the war; that we now have a National Government, exercising as much force and power as any in Europe; that efforts to embarrass it, or to restore the old system, will be abortive and injurious; and that our true policy is a pronounced loyalty to the Government, and thus build up our waste places and secure public order and tranquillity.

For other particulars of this gentleman's career reference is made to the following article from the Pennsylvania *Inquirer*, then the leading organ of the national Whig party:

EXTRACT TO THE EDITOR, DATED

WASHINGTON, January 28, 1837.

It has occurred to me that the dullness of political correspondence from Washington might be enlivened by incidental sketches of the men who flourish in the National Councils; and as it is equally my duty and pleasure to make my letters as interesting as practicable, I shall in a few moments proceed to give you a miniature portrait of the youngest member of the House of Representatives.

I am not unaware that, in writing sketches of the kind, the paragraphist lays himself liable to censure on the part of party, and to disapprobation on the part of the subject delineated. I have experienced these evils; but as I am not one of those hinds or bondmen so ably described by Sir Walter Scott in his inimitable novel of "Ivanhoe," I shall attempt to sketch the Hon. John F. H. Claiborne, of Mississippi, who is, as I before said, the youngest member of the House of Representatives.

Mr. Claiborne is a native of Mississippi, and it is a fact somewhat remarkable that he is the only member from the west of the mountains who is a native-born citizen of that region. He was lineally descended from the Claibornes of Virginia, a family conspicuous in the political annals of the "Old Dominion" and Louisiana. From his father he inherited a patrimonial estate equal to the demands of a classical education, and those other essentials which are indispensable to the completion of a well-educated gentleman.

After having completed his education in the best seminaries of learning in the Valley of the Mississippi, his thirst for letters induced him to devote himself to the duties of the public press. But as he was not content with a mere knowledge of the art of the editorial profession, he resolved to become a practical printer, and with this view learned the business of a setter of types. As soon as he had become a printer in theory and in fact, he placed himself at the head of a newspaper in Mississippi, and was in fact and in theory its editor.

His earliest efforts as an editor were directed to the advancement of the political fortunes of General Jackson, and whilst he was thus engaged it was my fortune to be most warmly and zealously employed in striving to defeat the hopes of the old soldier. And I well recollect that in those days of turmoil and political war my paper and his, though located at distant points of the Union, not unfrequently came in collision.

In the year 1835, Mr. Claiborne having, as the editor of a public newspaper, assisted in the business of elevating other men to office, arrived at the conclusion that he should not be guilty of any act of injustice if he "looked aloft" for his own preferment. He accordingly, in conformity with the usages of

the South and Southwest, nominated himself a candidate for Congress, and was elected without difficulty. On making his entrance at Washington, he modestly held himself in the background—a course, by the way, which prudence and interest should always dictate to the candidate for legislative honors—and, if I recollect aright, did not make his "first appearance" on the legislative stage till late in the session. Ill health attended him most of the session, and yet he was a daily attendant on the House of Representatives. I ought to have remarked in another place that Mr. Claiborne, before he had attained the age of twenty-one years, was elected to represent the city of Natchez in the popular branch of the Mississippi Legislature, which position he continued to occupy till he was elected to Congress.

At the commencement of the present session, in accordance with custom and the dictates of friendship and duty, he was called to announce to the House the death of his late colleague, the Hon. David Dickson. He rose to discharge the painful office under evident and strong embarrassment; but at last, controlling his feelings, he proceeded to offer a few unstudied and generous remarks on the character of the deceased, preparatory to offering the usual resolution, but before he closed he had won every heart and elicited the sympathies and tears of the assembled multitude. Never did man effect more in so few words; never was a stronger feeling produced by the eloquence of the unpremeditated language of the heart.

Although nothing like effect was aimed at, the speech produced everything that could have been desired, and Mr. Claiborne was immediately ranked among the most eloquent orators of the House of Representatives.

Since the time just referred to Mr. Claiborne has frequently addressed the House with admitted success and approbation, and never rises without commanding undivided attention.

In politics he acts with the administration; and though not a blind or a mad partisan, he yields to it a steady and a commanding support. In doing this he does not find an admirer in me; and it is to be hoped, if he supports Mr. Van Buren's administration—and he will do it to a certainty—that it will be

worthy of his aid and worthy of the country. In his devotion to Mississippi he is somewhat enthusiastic, if not absolutely fanatical, and, in my opinion, carries his sectional prejudices to an unnecessary extent.

On the abolition question he is exceedingly ultra, and if he possessed the power, I doubt not would soon silence all agitation on that subject by the passage of proscriptive edicts. Having been born and educated in a land of slaves, and being a large slave-holder himself, it is but natural that he should be somewhat ardent in relation to the subject; but if he hopes to put an end to free discussion and the freedom of the press at the North, he will find thousands who, opposed as they may be to the fanaticism of abolition, and ready to protect the South in the enjoyment of her chartered rights, will never surrender one iota of that liberty of speech, of action, and of the press, which is the birthright, the glory, and the boast of every free Anglo-Saxon American. The dastard of the North who would surrender the birthright of a freeman deserves nothing but the execration of our common country.

There is not a paragraph in Mr. Claiborne's political text-book that I can assent to. He is the friend of the administration—an opponent of the tariff—an opponent to all schemes for the distribution of the public lands: to all his positions I stand in the relation of the antipodes to the meridian. As a man of talents, as a scholar, and as one of the most promising young statesmen, he has my admiration.

I did intend to offer some extended specimens of his manner and matter as an orator, but as I have already exceeded my limits, I must content myself with offering a few paragraphs only. The following is an extract from a speech of his, delivered a few days since, on Mr. Chilton Allan's resolution to distribute the public lands:

"Sir, it is unwise thus to sport with the affections of your people; it is hard thus to deprive one of his home, humble though it be. Sprung from the earth, and destined to return to it, every man wishes to acquire an interest in it—some little spot that he may call his own. It is a deep, absorbing feeling, that nature has planted in us. The sailor on the "vasty

deep ;" the lone Indian and wild-bee hunter on the prairies of Missouri ; the mountaineer, as he threads his chamois-track ; and the soldier, perishing for fame ere he freezes into a stiffened corse, dreams, all dream of their early home ; and when every other feeling is subdued and withered, the heart that would not blench at scenes of crime and blood will soften under the 'Rans de Vache,' the early song of childhood.

"It is an undying feeling ; and when one has gone out from his father's wasted roof, and in the untrodden forest clustered his family around some humble shed, can he see it wrested from him by the laws of his country without cursing that country and those who govern it ?

* * * * * * *

"Mr. Speaker, for years past our legislation and our Constitution, or at least the spirit of our Constitution, have been frequently antipodes to each other. The Constitution rose from the wreck of ancient prejudices, a structure of light and beauty, based upon the great principle of equal rights, and dedicated to rational liberty and law. The other has too often been deformed by features incompatible with the genius of the age ; stamped with the crude conceptions of feudal times ; fettered with the restrictions dug up from sepulchred centuries. Thus your criminal code in this age of philosophy is founded on the precepts of Draco. The dungeon and the scaffold do their work as they did a thousand years ago, and the Promethean light of science that we hold in our hands serves but to show the skeletons of the victims shut up for debt who have perished amid the death damps of your jails and dungeons. The same current runs through your whole system of jurisprudence."

Mr. Claiborne is an ardent advocate, not only of the project now before the country for the recognition of the independence of Texas, but an advocate for the annexation of that province to this Union. Here again I am most warmly opposed to him. In the speech from which I have already quoted he thus spoke on the subject :

"Mr. Speaker, this is the only Government that ever speculated in the soil. England, when she held her dominion here, was prodigal in her donations. Spain gave away her lands.

Her sons were the pioneers of this new world : nor storm, nor unknown seas, nor shipwreck could deter them. On, on they went, in the career of high adventure. Land and honors were the rewards she held out to them, and their whole history is a series of phenomena, from the outset of her great navigator to the downfall of Montezuma—the most extraordinary triumph ever obtained by civilized valor over physical force. Texas has pursued the same policy, and its wisdom is evident. If her public domain had been fettered with the same legal restraints to settlement that exist here, not five hundred of the many thousands now there would have crossed the Sabine. But she has invited them by liberal donations ; and when that soil was invaded and the flag of despotism reeking over her beautiful prairies, look how bravely those emigrants have rushed to her defence. Oh, sir, you may rifle the leaves of history for deeds of fame, you may search among the fallen columns and mutilated tombs of Greece and Rome, immortal even in their dissolution, but you will never find a cause more sacred, that has been more nobly maintained, than the cause of Texas. Land of the brave and free ! refuge of the unfortunate ! home of the poor ! soon may thy star shine in cloudless beauty from our own loved banner of living glory."

The quotations I have made will afford you some idea of Mr. Claiborne's eloquence. He is always impassioned, and never speaks without evincing that feeling which is the peculiar attribute of genius, and which can only be subdued and chastened by age and experience. He is now on the minor side of twenty-eight years ; his person is tall and slender, and has evidently suffered from those diseases which are peculiar to a Southern climate. His voice is round, full, and melodious, and his action chaste, dignified, and original.

Possessed of a large fortune, the greater part of which was acquired by his own industry and enterprise, he has early in life devoted himself to politics ; and, with resources, intellectual, fiscal, and physical, ample and at his immediate command, I see no reason why he should not ultimately attain that goal towards which a commendable ambition directs his steps.

# APPENDIX.

# APPENDIX.

## JUDICIAL DATA.

JUDGES OF THE SUPREME COURT, CIRCUIT JUDGES, CHANCELLORS, AND ATTORNEYS-GENERAL OF MISSISSIPPI, SINCE THE ORGANIZATION OF THE STATE GOVERNMENT.

UNDER the first Constitution of Mississippi, adopted in 1817, the Supreme Court was held semi-annually by the Circuit Judges sitting in bank at the capital of the State. The Judges during that period—1817–1832—and the years in which they were respectively appointed, were as follows :

John P. Hampton, C.J. ; W. B. Shields, John Taylor, Powhatan Ellis, Joshua G. Clarke, 1818 ; Walter Leake, 1820 ; Livingston B. Metcalf, 1821 ; Richard Stockton, 1822 ; Edward Turner, C.J., 1824 ; J. Caldwell, 1825 ; John Black, George Winchester, 1826 ; William B. Griffith, Harry Cage, 1827 ; Isaac R. Nicholson, 1828 ; William L. Sharkey, 1831.

Judges of the High Court of Errors and Appeals elected by the people under the Constitution of 1832 :

William L. Sharkey, C.J. ; Daniel Wright, Cotesworth P. Smith, 1833 ; P. Rutilius R. Pray, 1837 ; James F. Trotter, 1839 ; Cotesworth P. Smith, Edward Turner, 1840 ; Alexander M. Clayton, Reuben Davis, 1842 ; Joseph S. B. Thacher, 1843 ; A. M. Clayton, 1845 ; W. L. Sharkey, C.J.; J. S. B. Thacher, 1847 ; William Yerger, Collin S. Tarpley, 1851 ; Cotesworth P. Smith, C.J. ; Ephraim S. Fisher, Alexander H. Handy, 1855 ; William L. Harris, 1859 ; Alexander H. Handy, C.J.; B. W. Hurst, William L. Harris, Henry T. Ellett, 1863.

Judges of the Supreme Court appointed by the Governor under the Constitution of 1868 :

Thomas Shackleford, C.J.; Ephraim G. Peyton, E. Jeffords, 1868 ; Ephraim G. Peyton, C.J. ; Horatio F. Simrall, Jonathan Tarbell, 1870 ; Horatio Simrall, C.J. ; H. H. Chalmers, J. A. P. Campbell, 1876 ; J. Z. George, C.J., 1879.

Judge George was elected to the United States Senate by the Legislature of 1880, but retains his position upon the bench, which, it is understood, he will not resign until he takes his seat in the Senate on the 4th of March, 1881. Judge Chalmers will then be Chief Justice by virtue of his seniority in office.

Judges of the Superior Court of Chancery, 1821–1857 :

Joshua G. Clarke, 1821 ; John A. Quitman, 1828 ; Edward Turner, 1835 ; Robert H. Buckner, 1839 ; Stephen Cocke, 1846 ; Charles Scott, 1853.

Vice-Chancellors :

Joseph W. Chalmers, appointed for the Northern District, established in 1842 ; succeeded by Henry Dickenson, elected in 1843 ; James M. Smiley, elected for the Southern District, established in 1846 ; George W. Doharty for the Northern District, 1850 ; B. C. Buckley for the Southern District, 1853.

The Chancery Courts were abolished in 1857, and their jurisdiction conferred upon the Circuit Judges.

Judges of the Circuit Courts, elected under the Constitution of 1832 :

T. A. Willis, A. M. Keegan, James F. Trotter, Alexander Montgomery, E. C. Wilkinson, 1833 ; T. B. Stirling, J. Scott, 1834 ; J. Walker, R. Hughes, G. Irish, 1835 ; James M. Maury, 1836 ; R. S. G. Perkins, Caswell R. Clifton, Buckner C. Harris, D. O. Shattuck, G. Coalter, T. S. Stirling, 1837 ; H. S. Bennett, Isaac R. Nicholson, J. A. Marshall, 1838 ; V. T. Crawford, F. W. Huling, J. Battaille, 1840 ; Franklin E. Plummer, G. Coalter, C. C. Cage, Albert G. Brown, J. H. Rollins, M. L. Fitch, S. Adams, H. S. Bennett, V. T. Crawford, B. F. Coruthers, H. Mounger, James M. Howry, 1841 ; T. A. Willis, 1843 ; Stanhope Posey, T. A. Willis, G. Coalter, A. B. Dawson, R. C. Perry, F. M. Rogers, H. R. Miller, 1845 ; Wiley P. Harris, 1847 ; Stanhope Posey, William S.

Bodley, J. E. McNair, Jacob S. Yerger, John Walter, E. G. Henry, William L. Harris, P. D. Scruggs, William M. Hancock, Joel M. Acker, William Cothran, 1847–1860; Hiram Cassidy, H. W. Foote, J. E. McNair, J. A. P. Campbell, J. S. Hamm, J. W. Thompson, 1860–1868.

Appointed by the Governor under the Constitution of 1868: Green C. Chandler, James M. Smiley, A. Alderson, W. H. Hancock, Uriah Millsaps, Robert Leachman, J. A. Orr, W. D. Bradford, B. B. Boone, Orlando Davis, C. C. Shackleford, E. S. Fisher, Jason Niles, W. B. Cunningham, George D. Brown.

The districts having been changed is the cause of their omission up to this period. The following Judges were appointed in 1876, and are yet on the bench, except Judge Cothran, who has lately died:

1st District, J. A. Green.
2d " J. W. C. Watson.
3d " Samuel Powell.
4th " B. F. Trimble.
5th " W. M. Cothran.
6th " J. M. Arnold.
7th " J. S. Hamm.
8th " A. G. Mayers.
9th " S. S. Calhoun.
10th " J. B. Chrisman.
11th, Special Statutory District, embracing only Warren County, U. M. Young.
12th, Special Statutory District, comprising only Adams County, Ralph North.

District Chancellors appointed by the Governor under the Chancery Court Act of 1871:

1st District, William G. Henderson.
2d " G. S. McMillan.
3d " Wesley Drane.
4th " Thomas Christian.
5th " Theodric Lyon.
6th " O. H. Whitfield.

7th District, Austin Pollard.
8th " A. E. Reynolds.
9th " De Witt Stearns.
10th " J. F. Simmons.
11th " Dallas P. Colley.
12th " J. J. Hooker.
13th " Samuel Young.
14th " Edward Hill.
15th " E. Stafford.
16th " E. W. Cabinniss.
17th " G. R. Gowen.
18th " D. N. Walker.
19th " J. W. Ellis.
20th " E. G. Peyton, Jr.

J. J. Hooker died in 1873, and W. A. Drennan was appointed to fill the unexpired term; but he was removed by Governor Ames for refusing bail to one Morgan, who had murdered his competitor for the office of sheriff of Yazoo County. D. N. Walker died also in 1873, and J. R. Goltury was appointed to fill his term.

Appointed by Governor Ames in 1875:

1st District, William G. Henderson.
2d " G. S. McMillan.
3d " R. Boyd.
4th " J. J. Dennis.
5th " C. A. Sullivan.
6th " O. H. Whitfield.
7th " William D. Frazee.
8th " C. C. Cullins.
9th " L. C. Abbott.
10th " J. N. Campbell.
11th " P. P. Bailey.
12th " Thomas Walton.
13th " William Beck.
14th " E. Hill.
15th " E. Stafford.
16th " H. R. Ware.

17th District, R. B. Stone.
18th " E. H. Osgood.

## CORRECTION—PAGES 536, 537.

I omitted to state that J. C. Gray was appointed Chancellor of the 3d, and Chas. Clark of the 4th District, in 1876. They died in 1878, and were succeeded by J. B. Morgan and W. G. Phelps respectively. Also, that the initials of Chancellor Graham are T. B., instead of G. B., and those of Chancellor Berry, T. Y., instead of G. G. Also, that Chancellor Brame declined a re-appointment in 1880; and that H. S. Van Eaton succeeded Chancellor Berry. I will add, in this connection, that my remarks in reference to the efficiency of the Chancellors, were intended to apply only to some of those in office prior to 1876. I had no intention to reflect in the least on those in office since, inasmuch as it is well understood that since 1876, those officers have been noted for their ability, integrity and high judicial virtues. I make this statement because some of my friends have suggested that my remarks in this respect might be misconstrued.

12th, Special Statutory District, comprising only Adams County, Ralph North.

All of these were reappointed in 1880, except L. Brame, who was succeeded by Frank A. Critz. G. G. Berry has also been superseded by some one.

In consequence of the appointment of some perhaps totally incompetent persons to this bench, and some whose characters for honesty were impeachable, these courts have not enjoyed fully the confidence and respect due to their functions, nor the popularity deserved by their organic efficiency. But it is to be hoped that amid such ample and capable material, many young Eldons, Hardwickes, Kents, and Buckners may yet assert themselves in Mississippi, and raise these courts to a standard of eminence equalled only by their importance.

Attorneys-General of Mississippi since the organization of the State Government:

Lyman Harding, 1818; Edward Turner, 1820; Thomas B. Reed, 1821; Richard Stockton, 1825; George Adams, 1827;

7th District, Austin Pollard.
8th " A. E. Reynolds.

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8th " C. C. Cullins.
9th " L. C. Abbott.
10th " J. N. Campbell.
11th " P. P. Bailey.
12th " Thomas Walton.
13th " William Beck.
14th " E. Hill.
15th " E. Stafford.
16th " H. R. Ware.

17th District, R. B. Stone.
18th " E. H. Osgood.
19th " Hiram Cassidy.
20th " E. G. Peyton.

Upon the accession of the Democratic party to power in 1876, the number of these chancellors was reduced from 20 to 12, and the persons appointed were as follows :

1st District, L. Haughton.
2d " A. B. Fly.
3d " J. B. Morgan.
4th " W. G. Phelps.
5th " R. W. Williamson.
6th " L. Brame.
7th " George Wood.
8th " G. B. Graham.
9th " E. G. Peyton.
10th " G. G. Berry.
11th, Special Statutory District, comprising only Warren County, U. M. Young.
12th, Special Statutory District, comprising only Adams County, Ralph North.

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Lyman Harding, 1818 ; Edward Turner, 1820 ; Thomas B. Reed, 1821 ; Richard Stockton, 1825 ; George Adams, 1827 ;

Richard M. Gains, 1830; M. D. Patten, 1834; Thomas F. Collins, 1837; John D. Freeman, 1841, re-elected in 1845; D. C. Glenn, 1850, re-elected in 1854; Thomas J. Wharton, 1858; Charles E. Hooker, 1866; Joshua Morris, 1869; J. E. Harris, 1873; Thomas C. Catchings, 1875.

The position of the last-named gentleman challenges observation. His career is laden with peculiar responsibility. The time of his election, his youth, and his talents, constitute him in some way a representative and leader of the young bar of the State, and his masterly course as Attorney-General has proudly merited the relation.

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